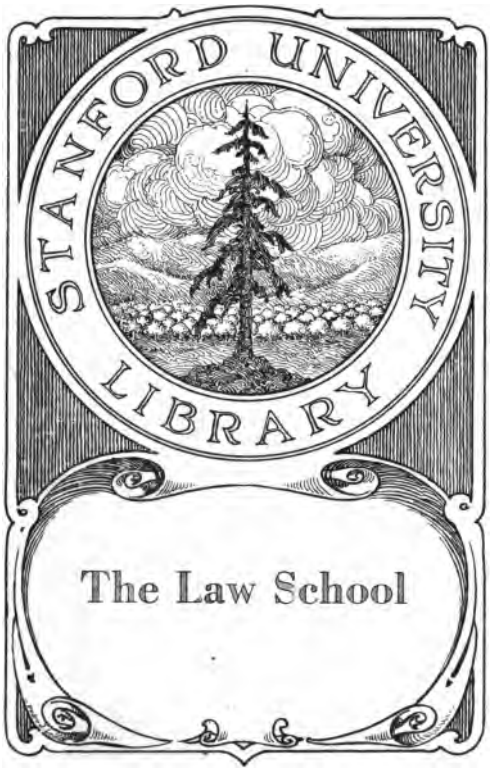

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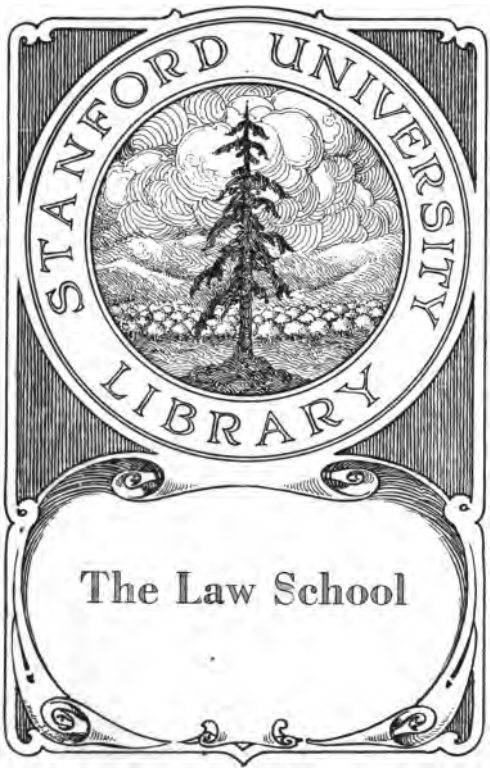
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State of Connecticut

PUBLIC DOCUMENT No. 40

Fourth Biennial Report

OF THE

ATTORNEY-GENERAL

FOR THE

Two Years Ended January 9, 1907

WILLIAM A. KING
Attorney-General

HARTFORD PRESS
The Case, Lockwood & Brainard Company
1907

Publication

Approved by

The Board of Control.

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REPORT OF THE ATTORNEY-GENERAL.

ATTORNEY-GENERAL'S OFFICE,

HARTFORD, January 8, 1907.

To the Governor of the State of Connecticut:

At the date of my last report two cases in which the state was a party were pending before our supreme court,— the Bridgeport Trust Company's Appeal and Hopkins' Appeal. Both cases related to the inheritance tax and to property subject to such tax. In the Bridgeport case, arising out of the estate of the late George F. Gilman, the administrator refused to inventory personal property aggregating some hundreds of thousands of dollars, outside of Connecticut. The state obtained from the court of probate an order that such inventory be made in order that the tax might be collected on all the property. The supreme court sustained the claim of the state. Hopkins' Appeal, involving much the same question, was also decided in favor of the state.

By decisions and legislation the inheritance tax law of Connecticut has, during the past four years, assumed new and clearly defined powers and limits. In 1903, the court, in Nettleton's Appeal (76 Conn., 235), decided that the law was constitutional; subsequently, in Gallup's Appeal (76 Conn., 617), it was held that personal property outside of this state, belonging to a Connecticut decedent, was subject to the tax. The decisions in Hopkins' Appeal, and in the case arising out of the Gilman estate in 1905, in relation to compelling outside property to pay the inheritance tax, added vastly to the efficiency of the law. The general assembly of 1903 enacted that personal

property, in Connecticut, including stock in Connecticut corporations, belonging to the estate of non-resident decedents, should be subject to the tax, unless the state, in which the decedent had resided, did not tax the personal property of Connecticut decedents. In 1905 this reciprocity clause was struck out. So that today the state taxes all the property within its jurisdiction, less certain exemptions, belonging to the estate of a decedent, whether such decedent resided in Connecticut or not. The excellent features of the Illinois law, providing for a graded inheritance tax, increasing as the estate increases in amount, have not yet become part of our law, although the validity of the Illinois law has been sustained by the United States supreme court, and its constitutionality is no longer questioned.

In connection with the inheritance tax and its collection, it may be of moment to briefly refer to what was known as the Atwood cases, a large number of which were instituted in 1904 to collect forfeitures from executors and administrators who had failed to file an inventory, and which were pending at the date of my last report. At the time it was claimed that those actions disclosed that much property of Connecticut decedents escaped the inheritance tax, because inventories were not filed. I caused the estates which were the basis of the Atwood actions to be investigated. The detailed results of that investigation appear on pages 110-126 of this report. The following is a summary of those results:

Whole number of estates involved in Atwood suits	237
Estates exempt from tax	223
Estates on which tax has been paid	5
Estates undetermined as to exemption	4
Estates unsettled, liable to tax	5

These results indicate that little, if any, property escapes the tax, so far as the estates of decedents resident in Connecticut are concerned. It must not be forgotten, however, that almost all the estates involved in the Atwood suits were so small as to be within the exempt class. Whether the interests of the state do not demand further legislation, such as exists in some other states, for the full enforcement of its rights under

the inheritance tax law, would seem to be worthy of serious consideration.

The general assembly of 1905 adopted the following joint resolution:

"That the Board of Control is hereby authorized to appropriate an amount not exceeding in the aggregate the sum of seventy-five thousand dollars, said sum to be in addition to the total amount to which said board of control is limited by law or otherwise authorized to make appropriations, for the purpose of refunding to life insurance companies of the state of New York such sums paid by such companies as taxes upon premiums received from business transacted in the state of Connecticut during the years 1901, 1902, 1903, and 1904, as the insurance commissioner of Connecticut shall determine should be so refunded under the provisions of existing law, and shall so certify to the comptroller."

This legislation grew out of these facts:

Life insurance companies transacting business in the state of New York, during 1901 to 1903, inclusive, were subjected to an annual tax of one per cent. on all business so transacted. Connecticut life insurance companies were compelled to pay this annual tax to New York on business transacted in that state in the years 1901 to 1903, inclusive.

Under what is known as the retaliatory insurance statute of our state, which provides that the insurance companies of another state doing business in Connecticut shall pay the same taxes to this state as are imposed by such other state on Connecticut insurance companies transacting business in that state, Connecticut collected from the New York life insurance companies from 1901 to 1903, inclusive, taxes in excess of $70,000.

In October, 1904, the court of appeals of New York decided that New York had illegally imposed this tax on the companies doing business within that state, and it was thereupon claimed by the New York companies that Connecticut had illegally collected said $70,000 from those companies. The above resolution, it was further claimed in behalf of the New York companies, had been adopted by our legislature for the purpose of returning to the New York companies the $70,000 of taxes collected by the state.

The state of New York was withholding, and still with-

holds, about $85,000 illegally collected from Connecticut companies, and refused to pay the same unless demand for such repayment had been made within one year from the date of collection. I advised the Connecticut insurance commissioner that under our retaliatory statutes he should apply the same rule of limitation to the repayment of taxes to the New York companies, and, as only one of these companies had made demand within one year of the date of the collection of said tax, that only $10,969.45 of said $70,000 should be returned to the New York companies. The insurance commissioner thereupon refused to return any sum in excess of said $10,969.45, and the remaining $60,000 is still held by the state of Connecticut. The Metropolitan Life Insurance Company brought action against the insurance commissioner, claiming that $34,872.45 should be returned to it under said resolution, and the New York Life Insurance Company brought similar action against the commissioner, claiming $12,803.82.

Both cases were taken to the supreme court, and it was there decided that the courts could not interfere with the decision of the commissioner.

The matter of this $60,000 tax collected from the New York insurance companies, and still retained by this state, is, aside from its financial aspect, of considerable moment. For many years it has been the policy of Connecticut to treat all insurance companies of another state exactly as such other state treated Connecticut companies. It is difficult to see why there should be any departure from that policy at the present time. New York has taken no action whatever towards returning to Connecticut companies the $85,000 collected from them under similar circumstances. I call attention to this matter in view of the probable attempt at further legislation to compel Connecticut to return $60,000 of these alleged illegal taxes collected from the New York companies, which the state of Connecticut now holds, and, under existing circumstances, justly and properly refuses to return.

The action of the General Assembly in 1905, in the matter of reducing the tax on savings banks, left it uncertain whether the tax had been reduced. If the bill in question had become a law, the revenues of the state would have been reduced

approximately $125,000. The question was taken to the Supreme Court, which sustained the claim of the state that the bill had not become a law.

In this case involving the tax on savings banks (State vs. Savings Bank of New London), the court, without deciding, rather strongly expresses doubt as to the constitutionality of secton 40 of the general statutes, which provides for the presentation of bills in the unengrossed form to the governor for his approval.

At the instance of the insurance commissioner, actions were brought against the Equitable Life Assurance Company of New York and the Mutual Life Insurance Company. The state claimed that the advertisements issued by these corporations, representing their assets, did not correspond with the law as set forth in section 3618 of the general statutes. The cases against both companies were settled by payment to the state of the forfeiture of $500 in each case, as provided in section 3619 of the general statutes.

In the matter of the lobster fisheries carried on by citizens of our state within New York waters, the policy adopted by New York during the years 1903 and 1904 has continued during the past two years, and our fishermen have not been subjected to arrest. The reciprocal legislation entered into by Connecticut has been productive of good results. The New York authorities have now arranged a system of licenses under which, on the payment of a nominal fee, citizens of Connecticut engaged in the fisheries within New York waters enjoy practically the same right as residents of New York.

As residents of each state have large interests in the oyster beds located within the waters of the other state, and as there is apparent uncertainty as to the validity of titles pertaining to some of these oyster beds, it would seem advisable to further protect the interests of the citizens of both states by reciprocal legislation. There is much reason to expect that the New York legislature, at its present session, will enact laws embodying the reciprocal features which, through the agreement of the officials representing the two states, have been in practical effect and operation during the past four years.

During the year 1905 the affairs of the Co-operative

Savings Society of Connecticut and the Connecticut Loan and Realty Company demanded the attention of the state. After several consultations with the directors and officials of the first named institution, Commissioner Morris Webster, and the attorney-general, it was decided that application for a receiver should be made by the society. The superior court for Hartford County appointed a receiver for the concern and its affairs are being wound up.

The state brought proceedings against the Connecticut Loan and Realty Company during the same year, alleging that the conduct of its business was such that it should be placed in the hands of a receiver. After several days trial in court it was agreed that an entirely new management composed of men satisfactory to Commissioner Webster and to the court should be selected in place of the old management. This was done, and the company has since been conducted by the new management so selected.

The number of corporations which failed to make the required annual returns during the past two years is much smaller than during the preceding two years. Action by the general assembly in annulling the charters of corporations failing to make reports, under limitations similar to those of Chapter 281 of the public acts of 1905, is the most feasible and efficient remedy that can be invoked against such failure.

This act annulled the corporate existence of approximately two thousand corporations which had failed to make annual reports. It was, however, provided that if such corporations filed reports on or before a certain date, and paid a forfeiture of $25 to the state, their corporate existence should not be affected by the act. It subsequently appeared that some of these corporations so named had been in no way delinquent, and that the act, through some clerical error, had included their names. The attention of the attorney-general was called to the manifest error, but in view of the language of the act I felt obliged to advise the secretary of the state that every corporation, named therein as delinquent, must file the annual report, and pay $25; that failure to do so would result in the annulment of the corporation, even though the name of such corporation had

appeared in the act through error. Thereupon the corporations erroneously included in the act, as above stated, paid the forfeitures to the state. It is clearly the duty of the state to repay to these corporations the money so paid. The general assembly alone has the power to cause this to be done.

The validity of the act increasing the salaries of the judges, enacted by the general assembly of 1905, was submitted to the supreme court and sustained.

In June 1906, the city of Hartford made application to the attorney-general alleging, among other things, that certain corporations located in Hartford had formed a combination in restraint of trade, to the detriment of the public, for the purpose of fixing the price of ice on which Hartford was dependent for its supply; and asking that the state take action in the premises. From the evidence submitted I was satisfied that all the allegations were true. Actions in the nature of *quo warranto* were instituted in the name of the state against the Hartford Ice Company, the Spring Brook Ice Company, and the Trout Brook Ice and Feed Company, claiming that the charters of said companies be declared forfeited. The actions are pending before the superior court for Hartford County.

The general assembly at its session in 1905 enacted that the attorney-general should be a member of the board of control. Acting in that capacity the statutes relating to the powers and duties of the board of control have, of necessity, been frequently and forcibly called to my attention. If one ignores entirely the question as to the constitutionality of the laws conferring on the board of control some of its present powers, he can hardly fail to be impressed with the urgent need that exists for a complete and thorough recasting of the statutes relating to those powers. As these statutes now exist they are uncertain in the extreme. The powers conferred by them are elastic to an extent probably never contemplated.

By virtue of the resolution creating the commission to determine the boundary line between Connecticut and Mas-

sachusetts the attorney-general became a member of that commission, and as such has acted.

Embodied in this report are some of the opinions which I have been requested to give in writing.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

CASES BROUGHT SINCE JANUARY 3, 1905.

STATE OF CONNECTICUT
vs.
SAVINGS BANK OF NEW LONDON.

Decided in favor of the state by the Supreme Court, June 8, 1906.

STATE OF CONNECTICUT
vs.
THE EQUITABLE LIFE ASSURANCE SOCIETY OF U. S.

Settled by the payment to the state of the $500 forfeiture.

STATE OF CONNECTICUT
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

Settled by the payment to the state of the $500 forfeiture.

PATRICK McGOVERN
vs.
ASAHEL W. MITCHELL, COMPTROLLER,
and
JAMES F. WALSH, TREASURER.

Decided by the Supreme Court in favor of the respondents, March 7, 1906.

METROPOLITAN LIFE INSURANCE COMPANY

vs.

THERON UPSON, INSURANCE COMMISSIONER.

Decided by the Supreme Court in favor of the Insurance Commissioner, June 8, 1906.

NEW YORK LIFE INSURANCE COMPANY

vs.

THERON UPSON, INSURANCE COMMISSIONER.

Decided by the Supreme Court in favor of the Insurance Commissioner, June 8, 1906.

STATE OF CONNECTICUT

vs.

THE HARTFORD ICE COMPANY

Pending before the Superior Court for Hartford County.

STATE OF CONNECTICUT

vs.

THE SPRING BROOK ICE COMPANY.

Pending before the Superior Court for Hartford County.

STATE OF CONNECTICUT

vs.

THE TROUT BROOK ICE AND FEED COMPANY.

Pending before the Superior Court for Hartford County.

CASES PENDING AT THE DATE OF LAST REPORT.

WOOLSEY R. HOPKINS' APPEAL FROM PROBATE
(IN RE THE INHERITANCE TAX)

Decided in favor of the state April 20, 1905.

THE BRIDGEPORT TRUST COMPANY'S APPEAL FROM PROBATE
(IN RE THE INHERITANCE TAX)

Decided in favor of the state April 20, 1905.

APPLICATION OF HENRY T. BLAKE
(IN RE SECRET BALLOT LAW)

Dismissed by the Supreme Court, March 9, 1905.

STATE OF CONNECTICUT
vs.
SAMUEL BENJAMIN ET AL.
(FORECLOSURE OF MORTGAGE)

Title passed to the state, October 23, 1905.

STATE OF CONNECTICUT
vs.
FRANK BRAINERD ET AL.
(FORECLOSURE OF MORTGAGE)

Case settled.

STATE OF CONNECTICUT

vs.

FRANCIS DONAHUE ET AL

(FORECLOSURE OF MORTGAGE)

Title passed to the state, April 25, 1905.

FORECLOSURE CASES WITHIN THE STATE.

1905-1906.

STATE OF CONNECTICUT

vs.

JOSEPH HOLCOMB ET AL.

Brought to the Superior Court for Hartford County by complaint dated January 13, 1905, and returnable on the first Tuesday of February, 1905.

Title passed to the State May 11, 1905.

STATE OF CONNECTICUT

vs.

DANIEL J. DONOVAN ET AL.

Brought to the Superior Court for New Haven County by complaint dated January 13, 1905, and returnable on the first Tuesday of February, 1905.

Title passed to the State July 13, 1905.

STATE OF CONNECTICUT

vs.

ANDY SHAILER ET AL.

Arrearages adjusted and suit withdrawn.

STATE OF CONNECTICUT

vs.

JOHN R. BEAUMONT ET AL.

Brought to the Superior Court for Hartford County by

complaint dated February 7, 1905, and returnable on the first Tuesday of March, 1905.

Decree of foreclosure by sale, May 17, 1905.

STATE OF CONNECTICUT

vs.

ELLEN F. SHERMAN, ADM'R, ET AL.

Brought to the Court of Common Pleas for Hartford County by complaint dated October 20, 1905, and returnable to the first Tuesday of November, 1905.

Title passed to the State March 15, 1906.

STATE OF CONNECTICUT

vs.

HARRIETT FOX ET AL.

Brought to the Court of Common Pleas for Hartford County by complaint dated January 12, 1905, and returnable on the first Tuesday of February, 1905.

Title passed to the State May 2, 1905.

STATE OF CONNECTICUT

vs.

SAMUEL BENJAMIN ET AL.

Brought to the Superior Court for Hartford County by complaint dated February 16, 1904, and returnable on the first Tuesday of March, 1904.

Title passed to the State October 23, 1905.

STATE OF CONNECTICUT

vs.

ELIZABETH CRONIN ET AL.

Arrearages adjusted and suit withdrawn.

STATE OF CONNECTICUT
vs.
LEWIS W. ALLEN ET AL.

Arrearages adjusted and suit withdrawn.

STATE OF CONNECTICUT
vs.
ARTHUR H. MERRILL ET AL.

Foreclosure by sale. Title passed to Fanny W. Abbe October 13, 1906.

STATE OF CONNECTICUT
vs.
ISABELLA M. KINGHORN ET AL.

Brought to the Superior Court for Hartford County by complaint dated November 16, 1905, and returnable on the first Tuesday of December, 1905.

Title passed to the State March 8, 1906.

STATE OF CONNECTICUT
vs.
FRANCES L. KNAPP ET AL.

Brought to the Superior Court in and for Fairfield County by complaint dated March 19, 1906, and returnable on the first Tuesday of April, 1906.

Decree of sale issued June 22, 1906; property sold, and principal, interest, and costs ($9,859.57) paid to the State October 5, 1906.

STATE OF CONNECTICUT
vs.
HENRIETTA K. WYNNE ET AL.

Brought to the Superior Court for New Haven County by complaint dated March 19, 1906, and returnable on the first Tuesday of April, 1906.

Title passed to State September 26, 1906.

STATE OF CONNECTICUT

vs.

CARRIE S. BUTLER ET AL.

Arrearages adjusted and suit withdrawn.

STATE OF CONNECTICUT

vs.

PATRICK SULLIVAN ET AL.

Brought to the Court of Common Pleas, Hartford County. Judgment rendered December 14, 1906. Time limited for redemption the second Monday of January, 1907.

ACTIONS OUTSIDE THE STATE OF CONNECTICUT, 1905-1906.

STATE *vs.* JOHN W. TAYLOR.
Foreclosure of mortgage. Authorized December 10, 1903.
Attorney, Wm. H. Phipps, Paulding, O.
Title of property passed to the State August 17, 1906.

STATE *vs.* J. C. H. ELDER.
Foreclosure of mortgage. Authorized April 29, 1904.
Attorneys, Sutphen & Sutphen, Defiance, O. Fee for services, $50.
Claims adusted in full May 16, 1905.

STATE *vs.* S. C. BURKLEY *et al.*
Foreclosure of mortgages. Authorized September 26, 1904.
Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $60 (three suits).
Title of property passed to the State October 5, 1905.

STATE *vs.* MARGARET TAYLOR *et al.*
Foreclosure of mortgage. Authorized September 26, 1904.
Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $40.
Title of property passed to the State January 20, 1905.

STATE *vs.* JOHN C. BARBER *et al.*
Foreclosure of mortgage. Authorized October 26, 1904.
Attorney, W. H. Phipps, Paulding, O.
Case still pending.

STATE *vs.* LOUIS BAER.

Foreclosure of mortgage. Authorized October 26, 1904.

Claim adjusted without expense to the State February 1, 1905.

STATE *vs.* WM. A. DEHN.

Foreclosure of mortgage. Authorized April 8, 1905.

Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $25.

Title of property passed to the State September 28, 1905.

STATE *vs.* THOS. MCGRATH.

Foreclosure of mortgage. Authorized May 12, 1905.

Attorneys, Holbrook & Monsarrat, Toledo, O.

Claim adjusted and paid without expense February 19, 1906.

STATE *vs.* BENJAMIN STANLEY.

Foreclosure of mortgage. Authorized May 22, 1905.

Attorney, Wm. H. Phipps, Paulding, O. Fee for services, $26.

Claim paid in full December, 1905.

STATE *vs.* ALBERT C. CALLIN *et al.*

Foreclosure of mortgage. Authorized July 10, 1905.

Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $25.

Title of property passed to the State September 13, 1905.

STATE *vs.* SARAH AND WILLIAM BRADLEY.

Foreclosure of mortgage. Authorized July 19, 1905.

Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $25.

Claim paid in full June 2, 1906.

STATE *vs.* GEORGE H. JAY.

Foreclosure of mortgage. Authorized July 19, 1905.

Attorneys, Holbrook & Monsarrat, Toledo, O.

Claim paid in full without expense to the State May 15, 1906.

STATE *vs.* MARGARET MCCORMICK.

Foreclosure of mortgage. Authorized September 20, 1905.

Attorney, W. H. Phipps, Paulding, O. Fee for services, $20.

Title of property passed to the State August 17, 1906.

STATE *vs.* OLLIE AND BRICE MCCOY.

Foreclosure of mortgage. Authorized September 20, 1905.

Attorney, Wm. H. Phipps, Paulding, O.

Case still pending.

STATE *vs.* WM. P. REID *et al.*

Foreclosure of mortgage. Authorized September 13, 1905.

Attorneys, Holbrook & Monsarrat, Toledo, O.

Claim paid in full October 17, 1905, without expense to the State.

STATE *vs.* WM. T. TAYLOR *et al.*

Foreclosure of mortgage. Authorized September 27, 1905.

Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $40.

Title of property passed to the State December 26, 1905.

STATE *vs.* WM. T. TAYLOR *et al.*

Foreclosure of mortgage. Authorized September 27, 1905.

Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $25.

Title of property passed to the State September, 1905.

STATE *vs.* WM. T. TAYLOR *et al.*

Foreclosure of mortgage. Authorized September 27, 1905.

Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $25.

Title of property passed to the State October 17, 1905.

STATE *vs.* ANNIE AND JOHN W. CHOWN.

Foreclosure of mortgage. Authorized November 15, 1905.

Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $15.

Claim paid in full August 4, 1906.

STATE *vs.* TRAMMEL B. PALMER.

Foreclosure of mortgage. Authorized April 14, 1906.

Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $40.

Title of property passed to the State June 21, 1906.

STATE *vs.* HATTIE A. CARROLL.

Foreclosure of mortgage. Authorized April 14, 1906.

Attorneys, Holbrook & Monsarrat, Toledo, O. Fee for services, $35.

Claim paid in full October 10, 1906.

STATE *vs.* ROSE S. PETERS *et al.*

Foreclosure of mortgage. Authorized May 31, 1906.

Attorney, W. H. Phipps. Paulding. O. Fee for services, $21.55.

Claim paid in full December 7, 1906.

STATE *vs.* GEO. AUER *et al.*

Foreclosure of mortgage. Authorized August 22, 1906.

Attorneys, Holbrook & Monsarrat, Toledo, O.

Case still pending.

STATE *vs.* EDGAR P. AND ANNA LACY.

Foreclosure of mortgage. Authorized May 31, 1906.

Case still pending.

OPINIONS.

CONNECTICUT STATE PRISON.

In re clerical expenses incurred by the board of directors of the Connecticut State Prison.

HARTFORD, April 11, 1905.

TO HIS EXCELLENCY, THE GOVERNOR:

In response to your request for my written opinion as to whether the directors of the state prison are authorized by law to expend a reasonable sum for clerical expenses, I submit the following:

Section 4811 of the general statutes provides that there shall be paid to the directors of the state prison their necessary expenses. If, in the judgment of the state prison directors, clerical services are necessary in the proper performance of their duties as directors, then, in my opinion, the statute which I have quoted authorizes such reasonable expense.

The directors, within reasonable bounds, are authorized to determine what expenses are necessary in the proper performance of their duties. The amounts paid by them for clerical expenses, as submitted by you, do not seem to me to be an unreasonable exercise of the authority with which they are vested.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

APPOINTMENT OF TRUSTEES OF THE CONNECTICUT SCHOOL FOR BOYS

The phrase, "vicinity of the institution," construed, as used in section 2818 of the General Statutes, providing for the appointment of trustees of the Connecticut School for Boys.

HARTFORD, May 29, 1905.

TO THE COMMITTEE ON SENATE APPOINTMENTS:

Gentlemen: I have before me your request through the clerk of your committee for my opinion as to whether the city of New Haven is included within the term "vicinity of the institution" as used in section 2818 of the general statutes, in relation to the Connecticut School for Boys.

"SECTION 2818. Its government shall be vested in a board of twelve trustees, to be appointed by the senate, one from each county, and four from the vicinity of the institution. During each regular session of the general assembly, the senate shall appoint six trustees, who shall hold office for four years from the first day of July following their appointment. The governor may fill any vacancy which occurs when the general assembly is not in session, until its next regular session."

It is difficult, if not impossible, to draw a line which would mark the geographical boundary of "vicinity" as used in section 2818. The meaning of the word depends so largely on the connection in which it is used that it cannot be exactly translated into miles or distances.

While the dictionaries contain general definitions of the word, they afford little, if any, assistance in determining the exact question which you place before me. The decisions of the courts on the meaning of the word show that the term "vicinity" is not susceptible of any definite construction. I quote some decisions to illustrate this proposition:

"Vicinity means neighborhood and signifies nearness as opposed to remoteness. Whether a place is in the vicinity or neighborhood of another depends upon no arbitrary rule of dis-

tance or topography." State vs. Meek, 26 Wash., 405. Langley vs. Barnstead, 63 N. H., 246.

"The term 'vicinity' does not express any definite idea of distance." Schmidt vs. Kansas City Distilling Co., 90 Mo., 284.

"The word 'vicinity' as used in a statute granting a gas company a right to manufacture gas for the purpose of lighting the streets and buildings in a certain town and its vicinity, applies only to the streets, avenues, alleys and public places adjoining the town, and does not embrace other places and territories constituting an independent municipal government. English's Law Dictionary defines 'vicinity' as adjacent; that which is near. Webster defines 'vicinity' as the quality or state of being near, or not remote; nearness; that which is adjacent to anything; neighborhood." Borough of Madison vs. Morristown Gas Light Company, 54 Atl., 439, 440. 65 N. J. Eq., 356.

To the same effect are Mock vs. Muncie, 9 Ind. App., 536, and In re Hancock Street, 18 Pa. St., 31.

You will thus see that any limitation on the term "vicinity" must depend on the particular context in which the word is used.

In the present instance the term used is "from the vicinity of the institution." In my opinion this expression materially narrows the construction from that which might have been possible had the limitation read "from the vicinity of Meriden." I am obliged to say to you that I do not think New Haven is within "the vicinity of the institution" as the term is used in the statute.

I am strengthened in this view by the fact that the appointments made under this part of the statute for many years (and I think ever since its enactment), have been from residents of Meriden, where the institution is located. This, to a certain extent, amounts to contemporaneous construction, and is entitled in a case of doubtful construction to some weight.

The court in one of the cases above cited used this language:

"Vicinity, when applied to a practical matter, might very readily cause disagreement in honest minds; for, in the matter

in hand, ' vicinity ' is not a matter of eyesight only, but for the judgment also."

I suggest that the language just quoted applies with force to the use of the word in the statute in question. The uncertainty and indefiniteness which arises from the term " vicinity of the institution " would seem to furnish just occasion for legislation. Either another word susceptible of definite meaning might be used, or the term " vicinity of the institution " should be expressly defined by the statute.

In the event that you decide that the statute ought to be made clear by amendment I will, if you so desire, act with you in formulating such proposed amendment as you may deem necessary.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

CORPORATIONS.

HARTFORD, June 7, 1905.

To the Committee on Corporations:

The secretary of state, as a result of a prolonged investigation, has recently reported to me the following facts in relation to the returns of corporations:

Over 2,000 corporations, apparently extinct in all save name, have failed to make any returns.

One thousand two hundred and fifty-six corporations, embracing in that number some of the foremost business concerns in this state, and all of which are apparently existent in fact, have failed to make the returns required by law.

Of these 1,256 corporations 467 have filed no reports whatever; 462 have filed a report with the secretary of state, but have failed to file a copy in the office of the town clerk; and 327 have filed reports, as required by law, except that they were filed after the time limited by the statute.

Section 37 of chapter 194 of the public acts of 1903, containing the law on this subject, reads as follows:

" The president and treasurer of every corporation having capital

stock, except banks, trust companies, insurance and surety companies, railroads or street railway companies, express companies, building and loan associations, and investment companies, shall, annually, on or before the fifteenth day of February or August, make, sign, and swear to and file in the office of the secretary of the state a certificate setting forth as of the first day of January or July immediately preceding: (1) The name, residence, and post-office address of each of its officers and directors: (2) The amount of the outstanding capital stock which has not been paid for in full, with the amount due thereon: (3) The location of its principal office in this state, with the street and number, if any there be, and the name of the agent or person in charge thereof upon whom process against the corporation may be served. The secretary shall thereupon record such certificate in a book kept by him for that purpose, and shall furnish a certified copy of such certificate to the persons filing the same, who shall forthwith cause such certified copy to be recorded in the office of the town clerk of the town in which such corporation is located, and said town clerk shall record the same in a book kept by him for that purpose. On the fifteenth day of March and September the town clerks of the several towns shall report to the secretary of the state the names of all corporations whose annual returns have been filed for record during the preceding six months in accordance with the provisions of this section, and the secretary shall report to the attorney-general every six months, the names of all corporations which have failed to comply with the provisions of this section, and the attorney-general shall collect all forfeitures due under this section. Every corporation whose officers shall fail to comply with the requirements of this section shall forfeit to the state one hundred dollars for each failure."

In the case of the 2,000 corporations which exist only in name it would be an apparent waste of money to bring suits for recovery of the forfeitures. The state would be at the expense of officers' fees for service, and judgments against defendant corporations of this class would be practically worthless.

I suggest for your consideration the action of the general assembly in 1880, when, under somewhat analogous conditions, a law was enacted which legally extinguished some hundreds of corporations that for a long time had existed only in name. For the purpose of concretely presenting this phase of the subject I have prepared a draft of a statute, similar to that enacted in 1880 (Chap. 98 of the public acts of 1880), and which, as drawn, would be applicable to the corporations now under discussion.

In regard to the corporations which have filed returns, but not in full compliance with the statute:

The law imposing a forfeiture of $100 has been in force since July 1, 1901. If, in the judgment of the general assembly, the apparent attempt on the part of these corporations

to comply with the law should free them from the forfeiture, such a result could be reached by validating their returns. To bring the matter fully before you I submit for your consideration a draft of a statute, which, in my opinion, would validate these otherwise illegal returns.

In relation to the 467 living corporations which have made no returns:

In the event that you should decide that the best results would be obtained by fixing a time within which these corporations may make returns, and in default of so making returns be subject to the penalty of annulment of their charter powers, I submit a draft of a proposed act which I think would accomplish that result.

Should you, however, believe that the suits should be prosecuted against these 467 delinquent corporations I would suggest that section 37 of chapter 194 of the public acts of 1903 be amended so as to more clearly define the method of procedure to be adopted.

I am very respectfully,

WILLIAM A. KING,
Attorney-General.

CONSTITUTIONAL LAW

A bill for an act which has passed both branches of the General Assembly, and is presented to the Governor while a motion to reconsider the action of one house is pending, is not "passed" within the meaning of that term as used in the Constitution; and the bill, although signed by the Governor, does not become a law.

HARTFORD, July 28, 1905.

HON. THEODORE BODENWEIN, SECRETARY OF STATE.

Sir: — You request me to advise you whether "Substitute for House Bill No. 252," entitled "An act amending an act concerning a tax on Savings Banks" should be included as a law in the official records of the acts passed by the general assembly at its recent session.

The first eight endorsements on the bill disclose, among other facts, that on June 6, 1905, the house rejected the bill; that the senate passed the bill on June 19; on June 20, the bill was again in the house and tabled for the calendar, and on June 22, the house asked for a committee of conference, which request was granted by the senate, June 27. The remaining endorsements on the bill are the following:

(Ninth Endorsement)

House of Representatives
July 19, 1905
Reconsidered and passed
Motion to reconsider — Motion tabled.

(The words, "motion to reconsider — motion tabled," appearing in the above endorsement were not on the bill when it was taken from the House and presented to the Governor, but were at that time in the form of memoranda made and kept by the clerk, for the purpose of making the Journal and completing the record, and were made part of this endorsement after the tenth endorsement had been affixed to the bill.)

(Tenth Endorsement)

Approved July 19, 1905,
HENRY ROBERTS,
Governor.

(Across all the words and date of the tenth endorsement lines of erasure have been drawn.)

(Eleventh Endorsement)

House of Representatives
July 19, 1905
Later, reconsidered and
indefinitely postponed

(The eleventh endorsement was made on the 20th of July from memoranda made by the clerk at the time of the action set forth in the endorsement.)

Article Three, section 9, of the constitution provides that each house shall keep a journal of its proceedings. House

Rule No. 8, orders the clerk to keep a journal of the house and to enter therein a record of each day's proceedings.

The memoranda of the clerk of the house, from which the journal of the house is made, embody the following facts:

During the forenoon session of July 19, 1905, the committee on conference reported on the bill, and the house voted to recede and concur with the senate in the passage of the bill. After recess, at about two o'clock in the afternoon, it was moved in the house to reconsider the action of the house in passing the bill. The motion to reconsider was tabled.

(At the time that this motion to reconsider was made and tabled the bill was in the hands of the speaker, *pro tem.* (Mr. Alcorn of Suffield).

The bill remained on the clerk's desk for some time after the motion to reconsider had been tabled. Later in the day, and before the general assembly had adjourned, it was physically transmitted to the governor in the following manner:

At the suggestion of the deputy secretary of state the clerk of engrossed bills went to the clerk of the house, where he was shortly after joined by the deputy secretary, for such bills as were ready for transmission to the governor. Four bills and resolutions, and among them the bill in question, passed from the clerk of the house to the clerk of engrossed bills. The latter handed them to the deputy secretary of state, and the deputy secretary placed them, including House Bill No. 252, in the hands of the governor, who, shortly afterwards, and before the house had taken any further action on it, approved the bill (tenth endorsement), and transmitted it so approved to the secretary of state.

Subsequently, and during the afternoon session of July 19, it was moved in the house to take the motion to reconsider from the table, and to reconsider the action of the house in passing the bill. The speaker announced that the bill was in the office of the governor. On verbal motion a committee was appointed by the house to recall the bill.

The committee found the bill in the office of the secretary of state, approved, as above set forth, took it to the governor, and informed him that the bill had been presented to him by mistake. The governor thereupon caused his approval to be

erased as above indicated. The committee then brought the bill into the house.

It was then moved to take from the table the motion to reconsider the bill. The motion prevailed. The action of the house in passing the bill was then reconsidered, and by vote of the house the bill was indefinitely postponed.

The journal of the house shows that on July 15th, the rule requiring the clerk of the house to hold all bills and resolutions one day for reconsideration was suspended for the remainder of the session of 1905.

Section 36 of the general statutes directs the engrossing clerk to transmit engrossed bills to the secretary of state so that the latter may present them to the governor. Section 40, applying to "Substitute for House Bill No. 252," as it was not engrossed, reads as follows:

"All bills for acts, and resolutions, which shall hereafter be passed by the two houses of the general assembly, but which shall not have been engrossed prior to the final adjournment thereof, shall be transmitted to the governor for his approval; and, if approved by him, he shall sign the same, endorsing his approval thereon, and transmit the same to the secretary; and the secretary shall thereafter engross the said bills, under the direction of the engrossing committee, and, when so engrossed, they shall receive the signatures of the presiding officers of the two houses, the clerks and the governor, in the manner provided by law; and such bills so passed, signed, and approved, shall, from and after their said approval, have the same force and validity as all other laws of this state."

I think it ought to be stated that there is no question that every act of the clerk of engrossed bills, the clerk of the house, and the deputy secretary, relating to the bill, as above detailed, was done in good faith, in what they believed to be the honest discharge of duty, and with the purpose of legally and properly forwarding the business of the general assembly; and that the act of the clerk of the house in parting with the physical possession of the bill was an accident, occurring probably by reason of the press of business incident to the closing day of every general assembly.

The above statement includes all the material facts.

Article Fourth, section 12, of our constitution ordains that "every bill which shall have passed both houses of the general assembly shall be presented to the governor. If he approves he shall sign and transmit it to the secretary * * *."

This language embraces the completed process of the enactment of a law. When the steps there outlined have been taken a bill has become a law. Once a bill has become a law, in the manner provided by the constitution, it is unnecessary to say that the law so enacted cannot be affected by any subsequent action on the part of the governor and one branch of the general assembly.

It is not necessary to determine whether the executive after approving a bill can withdraw that approval before it passes from his custody, for in this case it had been transmitted from his custody to that of the secretary of state, as provided by section 12, of article fourth, of the constitution. So far as lay within the governor's power the bill had become a law, and the subsequent erasure of his approval was of no effect.

It seems hardly open to argument that the committee of recall was not endowed with any more power to regain the physical custody of the bill than would a messenger of the house acting under a vote of that body. The joint rules provide the method of recalling a bill. This method was not followed. The house evidently considered the bill as accidentally out of its physical custody, and adopted what, to it, seemed to be the most feasible method of regaining that custody.

Neither can there be any doubt that the subsequent action of the house in reconsidering and indefinitely postponing the bill was utterly nugatory, provided the bill was legally and properly before the governor when he approved it. If, however, the bill was not legally and properly before the governor when he approved it, then this action of the house becomes of great importance. In short, if the bill ever became a law, it is still a law. Whether it ever became a law depends, in my opinion, on the legal right of the house to the custody of the bill at the time that the bill was taken from the house, as set forth in the above statement of facts, for pre-

sentation to the governor. If the house was entitled to the possession of the bill at that time, then no other official could be rightfully entitled to it, until the house had relinquished its possession.

From the acts of the house in moving to reconsider its favorable action in passing the bill, voting to lay the motion on the table, and subsequently taking from the table the motion to reconsider, it is reasonably apparent that the house did not intend to treat as final its favorable action on the bill. It can hardly be claimed that the bill went from the house to the governor with either the acquiescence or knowledge of the house. If under these conditions the bill legally passed out of the custody of the house it must have so passed by reason of the existence of some parliamentary rule, having the force of law.

As to the effect of a vote to table a motion to reconsider, Cushing's Law and Practice of Legislative Assemblies, Section 1449, holds:

"The motion to *lay on the table* is a subsidiary motion, which supersedes and disposes of the motion to which it is applied for the time being. It may specify the time, or be expressed in general terms. In the former case if the motion prevails, the subject of it is disposed of for the time specified; in the latter for the day only on which the order was made. This motion is proper when the assembly has something else before it which claims its present attention, but is willing to reserve to itself the power of proceeding to consider the subject at a more convenient opportunity. In general, whatever adheres to the subject of this motion goes on the table with it, as, for example, where a motion to amend is ordered to lie on the table, the subject which it is proposed to amend goes there with it. But this rule does not apply to propositions which are independent of the motion laid on the table, though connected with it; thus, where a motion to amend the journal, or the question on the reception of a petition, or a motion to reconsider a vote by which a bill has been passed through one of its stages, or an appeal from the decision of the presiding officer on a question of order, is laid on the table, neither the journal, nor the petition, nor the bill, nor the question of order, goes on the table with the motion to amend, or to reconsider, or the appeal; the journal stands as if no motion to correct it had been made; *the bill may pass through its remaining*

stages; the petition is not thereby received; and the decision of the presiding officer stands as the decision of the House. According to the practice of legislative assemblies in this country, a motion laid on the table may be proceeded with at any time, even on the same day on which the order is made."

The language of this section, above quoted, applied to House Bill No. 252, would strongly indicate that there was nothing in the tabling of the motion to reconsider, which would hold the bill in the house; for despite the existence of the vote to table, it says that the bill "may pass through its remaining stages." The text of section 1449 is, however, sustained by references only to rulings in the United States House of Representatives, and is not supported by any other references. It may, and I think ought to, be conceded that, if the rule which prevails on this precise subject in congress also prevailed in the Connecticut general assembly, there would be little if any force in the claim that the bill was held in the House by the motions in question.

There are strong reasons for believing that this congressional rule or custom is peculiar to congress, and does not prevail in our general assembly. On this point I quote from Reed's Parliamentary Rules, Sections 115 and 206:

115. EFFECT OF MOTION IN THE HOUSE OF REPRESENTATIVES. The motion to lay upon the table in the United States House of Representatives defeats the proposition. It is never taken up again. *This differs from the custom of all other assemblies and leads to other modifications.* For instance, laying on the table a motion to reconsider does not carry with it the original question, but is equivalent to a refusal to reconsider.

206. PRACTICE IN THE HOUSE OF REPRESENTATIVES. In the United States House the motion to reconsider is limited by rule to the same or succeeding day. Such also seems the general rule in State legislatures. In order to practically nullify the rule in great measure, a custom has sprung up in the United States House for the promoter of the bill to move a reconsideration, and then at once to move to lay his own motion on the table. If the latter motion is agreed to, under the customs of the House the motion to reconsider is defeated, for nothing is ever taken off the table of the House save by unanimous consent.

The following language quoted from a ruling made by Hon. Thomas B. Reed, when Speaker of the House, shows the status of a bill pending a motion to reconsider (Hind's Parliamentary Precedents, page 630, Section 1194):

"Under our parliamentary system neither a bill nor an amendment is passed or adopted until the motion to reconsider is disposed of. The speaker is not allowed to sign a bill during the pendency of a motion to reconsider. Consequently it still remains an inchoate affair."

Now the House at Washington, by tabling the motion to reconsider would, according to its rule and custom, absolutely dispose of the motion to reconsider. This according to section 115 of Reed's Parliamentary Law, "*differs from the custom of all other assemblies.*" It would seem to follow that, in all other assemblies, where that rule or custom does not prevail, a bill has not been passed until the motion to reconsider has been disposed of according to the rules or custom of such assemblies. Until such disposal of the motion to reconsider, it remains, in the words of Speaker Reed, an "inchoate affair."

Under the title "Parliamentary Practice and Precedents," on page 132 of the Connecticut State Register for 1905, this statement is made in relation to this subject:

"The Washington practice of clinching a vote upon a bill by making a motion to reconsider, and then laying that motion upon the table does not obtain in Connecticut. It was attempted in 1861 and resulted in failure. To permit such a thing to be done would violate the common-sense rules permitting reconsideration within two days in the House and three days in the Senate, and would enable a temporary majority to obtain an unfair advantage."

The practice of the Connecticut House of representatives in this matter manifestly differs from the practice of the United States House of representatives. In the latter body if a motion to reconsider is tabled it clinches the passage of the bill, because then the motion, once tabled, cannot be taken from the table without unanimous consent. Under such a rule there is no reason why the motion to reconsider, being tabled,

should hold the bill. In the Connecticut House of representatives a motion to reconsider once laid on the table may be taken from the table without unanimous consent, but by a prevailing vote. Here, the purpose of laying on the table the motion to reconsider may be to permit the house, if it sees fit, to reconsider, at some appropriate time, its previous action, and not to clinch the vote that it is proposed ostensibly to consider. It would seem, therefore, that, under the rule of legislative bodies other than congress, as House bill No. 252 was in the possession of the house at the time the motion to reconsider its passage was made and tabled, the house was entitled to its continued possession until some disposition had been made of those motions.

In addition to the above it must be remembered that, although House rule 37, in relation to holding measures for reconsideration, had been suspended, the general parliamentary rule relating to reconsideration was in force in the house on July 19. The general rule is thus stated in Reed's Manual, in section 205:

"A motion to reconsider must be made on the day on which the motion sought to be revised was had, and before any action has been taken by the assembly in consequence of it. It can be entered even while a member has the floor, and can be acted on another day. It cannot be withdrawn except on the day it was made, except by consent of the assembly. If withdrawn on the day made, anyone can renew it. *It has been laid down by very good authority that motions to reconsider can be made any time during the session, that is, during the whole period for which the assembly sits. But this would lead to such abuse and so many bad practices, that modern opinion has become settled as stated above.* Even with this limitation the practice of reconsideration has led to much waste of time."

Under this rule, the house had, during the remainder of the session day of July 19, the right to reconsider the bill, unless it in some way lost that right. If, under the rule and custom of the Connecticut house, and indeed, as Mr. Reed says, of all legislative assemblies other than congress, the laying of a motion to reconsider on the table does not determine final action on the motion to reconsider, then something remained

to be done before the final action of the house on the bill was determined.

In view of all the facts I am not satisfied that at the time the bill was taken to the governor the house had finally acted on the bill to the extent of passing it within the meaning of that term as used in the constitution. Under the congressional rule the bill would have properly gone to the governor. Under the rule of legislative bodies, other than congress, the motions relating to reconsideration must be disposed of,— either by final adjournment without action,— in which case the bill would have been passed; by action on the part of the house in refusing to reconsider; or by action of the nature which the house took. Until some action had been taken divesting the house of its legal right to the custody of the bill, the bill, in my opinion, could not be legally presented to the governor for approval, nor would the approval of a bill, presented under such conditions, be of force and effect.

The constitution, as well as the statutes, impose on the secretary of state the duty of recording the acts of the general assembly. In determining whether an alleged act is, in reality, a law, the power of the secretary of state is exceedingly limited. Certain evidence which would be properly before a court, in determining whether a bill has become a law, cannot be considered by the secretary of state in determining his duty.

Whether House bill No. 252 has become a law is a question of great importance both to the State, and of equal moment to institutions which are intimately connected with the well-being of the people of our State. Because of the importance of the measure it seemed to me advisable to consider the question of its validity in the light of all the facts attendant on its alleged passage and approval. For the single purpose of advising you in relation to your duty in recording the acts of the general assembly many of the facts set forth in this opinion could not be considered. In other words, had the secretary of state retained possession of House bill No. 252 after it had been transmitted to him by the governor, bearing as the bill then did endorsements clearly indicating that it

had become a law,— the question as to your duty to record it as an act would present aspects radically differing from those which now present themselves by reason of the endorsements which now appear on the bill, and which indicate that the bill did not become a law. As to what would have been your duty had you retained possession of the bill, it is not necessary to consider. In view of the endorsements which now appear on the bill, together with such other facts as may be properly considered in this connection, I advise you that, in my opinion, it is not your duty to record House bill No. 252 as a public act.

To record a bill as an act in the manner prescribed by section 106 of the general statutes "creates a source of evidence" that the bill has become an act, which evidence is ordinarily conclusive. The authorities on this point are numerous; among them Eld vs. Gorham, 20 Conn., 6, and Field vs. Clark, 143 U. S., 650,— which latter case cites and comments on most of the authorities.

On the converse proposition,— that if a bill has actually become a law when measured by the constitutional requirements, its omission from the volume in which the laws are recorded is not conclusive,— on this proposition, it is necessary to cite only the State vs. South Norwalk, 77 Conn., 264, where the Supreme Court says:

"General Statutes, Section 106, provides that after the rising of each General Assembly, the Secretary of the State shall cause all the engrossed bills which shall have become laws to be bound in one volume, which shall be the official records of the Acts passed by that assembly. We take judicial notice that the joint resolution now in question is not contained in the volume so bound up, of the laws passed in 1903. This, however, is not conclusive upon the parties to this proceeding. The statute simply creates a source of evidence. The evidence which is thus furnished is in ordinary cases conclusive. Eld vs. Gorham, 20 Conn., 8, 16. But in a controversy to which the State is a party, and in which the issue is whether, by force of an express provision of the Constitution, on the admitted facts, a certain bill passed by the general assembly became a law though it is not to be found in the bound volume in the Secretary's office, the rule of decision must be the Constitution, rather than the statute under which that volume is made a public record. Had the bill in question become a law by

force of the Constitution, and then been inadvertently or improperly omitted from the volume, the State, by writ of mandamus, could have compelled the Secretary to alter his record so as to include it. The State can also, by *quo warranto* proceedings, put the ultimate facts before its courts and ask them to decide the fundamental question, whether the Constitution, by its self-executing declaration, made the bill a law."

It is useless to attempt to minimize the doubt surrounding and attaching to this bill. To authoritatively determine this doubt, and to affix the stamp of validity or invalidity to the bill, is solely within the province of the courts. By virtue of the statute creating the office of attorney-general, his opinion should control the secretary of state in the matter of recording the bill, but his opinion cannot in any way determine the validity of the bill, so far as the rights of parties, under its provisions, are affected.

I am very respectfully,

WILLIAM A. KING,
Attorney-General.

METHOD OF VOTING.

Chapter 174, of the Public Acts of 1905, provides that the vote on free text-books shall be by open ballot.

HARTFORD, September 18, 1905.

HON. THEODORE BODENWEIN, SECRETARY OF STATE.

My dear Sir:—In reply to your communication asking to be advised as to your duty, as secretary of state, in the matter of furnishing envelopes for the vote to be taken on "Free Text Books," under the provisions of chapter 174 of the Public Acts of 1905:

Chapter 174 reads as follows:

"Every town which has not heretofore directed its school visitors, town school committee, or board of education to purchase at the expense of the town, the text-books and other

school supplies used in the public schools of said town shall, at its annual town meeting in 1905, vote by ballot to determine whether the said school officers shall purchase text-books and supplies under the provisions of section 2135 of the general statutes. At the said annual town meeting in 1905, the selectmen shall provide a ballot box plainly marked 'free text-books,' and in towns divided into wards or voting districts, for annual town meetings, a ballot box marked as aforesaid shall be provided at each of such wards or voting districts. Those electors who are in favor of directing the said school officers to purchase text-books and supplies under the provisions of said section 2135 shall deposit in said ballot box a ballot with the words 'free text-books yes' written or printed thereon, and those who are opposed shall deposit a ballot with the words "free text-books no" written or printed thereon. The ballots cast shall be examined, sorted and counted, and the result declared, in the manner provided by law, and if a majority of the ballots so given in have the words 'free text-books yes' said school officers shall purchase such text-books and supplies under the provisions of said section 2135."

The act does not declare that the vote shall be by secret ballot. Unless there is some provision of law aside from the act indicating that the vote should be by secret ballot, it would seem reasonably clear that a secret ballot was not contemplated.

There is no statute directly affecting this question, unless it is section 1649 of the general statutes, which provides that "one vote for or against any educational purpose under the special laws of this state" may be placed in the envelope with certain other ballots.

In my opinion this provision of section 1649 does not control the vote to be taken under this act. Even if it be admitted that the vote to be cast will be for or against an "educational purpose," it can hardly be claimed that it meets the other requirement of what is above quoted from section 1649.

It will be observed that, at the annual town meetings, where this vote is to be taken, the selectmen are ordered by the Act to provide "ballot boxes, plainly marked 'free text-books'", in which the ballots on this question shall be deposited.

That a separate ballot box must be provided to be used exclusively for these ballots is clearly the meaning of this language. If that is so, then section 1649, above quoted, could not apply to this act, because under section 1649 no separate ballot box would be required as the ballots would be enclosed in the envelopes with those for town officers.

In my opinion the vote contemplated by chapter 174, of the public acts of 1905, in relation to free text-books, is a vote by open ballot.

I therefore advise you that it is not your duty to furnish envelopes.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

THE CORRUPT PRACTICES ACT

The term, "candidate," defined as including only such as are voted for at the election.

HARTFORD, Sept. 19, 1905.

HON. THEODORE BODENWEIN, SECRETARY OF STATE,

Hartford, Conn.

Dear Sir: The attorney-general, under the provisions of section 146 of the general statutes, has handed to me your communication of the 11th instant with the request that I answer the inquiries therein submitted by you.

I have, therefore, the honor of giving you the following as my opinion upon the legal construction of the provisions of the corrupt practice act passed by the last general assembly with reference to the question submitted.

Your inquiry is made, I understand, under the provisions of section 9 of said act, which provides that "the secretary of state shall, at the expense of the state, provide every town clerk with blank forms suitable for such statements." "Such state-

ments" refer to the statements to be made by candidates for office under the provisions of sections 7 and 8 preceding.

You desire to know who are to be deemed "candidates" within the provisions of this act, and especially with reference to the forms which are to be furnished by your office to the town clerks.

The purpose and scope of the act as stated in section 1 are very comprehensive, and the prohibitions are directed to every step in the political procedure from the preparations for the party caucus and the preliminary election of delegates down to the public election of candidates to public office.

Section 1 provides:

"The provisions of this act shall apply to the elections of all officers for whom ballots shall be cast pursuant to the provisions of chapter one hundred and four of the general statutes as amended, and to the elections of all officers to be voted for by the general assembly, by the board of aldermen or common council of any city, and by the warden and burgesses of any borough, to all caucuses and primary elections preliminary to any such other elections, *and to all candidates to be voted for at such elections, caucuses and primary elections.*"

The general provisions of this act of 1905 in their prohibitions reach all candidates to be voted for at caucuses and primary elections.

The provisions, however, of section 7 providing for sworn statements by candidates are not so comprehensive and do not reach candidates at caucuses and primary elections.

Sworn statements are required under the provisions of section 7 from every candidate for a public office, its provisions being as follows:

"Every candidate for public office, including candidates for the office of senator of the United States, shall within fifteen days after the election at which he was a candidate, file with the secretary of the state if a candidate for senator of the United States, representative in congress, or for any state, county, of probate office, state senator or representative in the general assembly, but with the town clerk of the town in which he resides if he was a candidate for a town, city, ward, borough or school district office, an itemized sworn statement setting forth in detail all the moneys contributed, expended or prom-

ised by him to aid and promote his nomination or election, or both, as the case may be," etc.

These statements are required only from candidates for public office.

They, therefore, do not reach the caucus or primary election. A candidate for the position of delegate to a convention is not a candidate for public office, and such candidates, therefore, are not comprised within the provisions of section 7, notwithstanding the general declaration of the scope of the act as contained in section 1. Section 7 is a criminal statute and must be strictly construed. Its provisions are clear and definite and cannot be enlarged or extended by reference to the general scope of the act or the intention of the legislature in passing it.

No one can be fined for a failure to file such a statement unless he comes clearly within the provisions of this section.

Section 7 further provides that at the end of fifteen days after any such election the secretary of state or the town clerk shall notify the proper prosecuting officer of any failure to file such a statement on the part of any candidate.

But the secretary of state and the town clerk will only have official knowledge of those persons who were candidates for the public office. They will have no official knowledge of the persons who were candidates at the caucuses or primary elections, and, therefore, the candidates of whom the secretary of state is to take knowledge are the candidates at the official election and not at the primary election.

Statements being requested only from such candidates, it is clearly only the duty of the secretary of the state under section 9 to provide a sufficient number of blanks for the town clerks, measured by the number of candidates who are to be voted for at the public election.

Yours very truly,

CHARLES E. GROSS.

CONDUCT OF ELECTIONS

In re duties of the Secretary of State in a special congressional election held on the day of the annual town meetings.

HON. THEODORE BODENWEIN, SECRETARY OF STATE.

My dear Sir: — The following communication from you bearing the date September 18, 1905, is before me:

"HARTFORD, Sept. 18, 1905.

ATTORNEY-GENERAL KING,

Hartford, Conn.

Dear Sir: — Will you give me your opinion as to whether in the case of the special election for congressman in the 3d District, called to be held on the same date as the town election, it will be necessary for me as secretary of state, to furnish separate official envelopes, as well as official envelopes, for the town election?

Also if it will be permissible for me in such case to furnish official envelopes of one color for the congressional election, and envelopes of a different color for the town election?

These questions are submitted to me by the respective chairmen of the Republican and Democratic state committees and I submit them to you.

Respectfully,
THEODORE BODENWEIN,
Secretary."

Your first question resolves itself into this: May an elector in the third congressional district election place his ballot for representative in congress in the envelope with his ballot for town officers, and thus deposit the ballot for such representative and for town officers at the same time and in the same ballot box?

Section 1649 of the general statutes provides that the elector may place his ballot for representative in congress and for town officers in the same envelope if such representative and town officers are voted for at "*one and the same election.*"

If the meetings of electors in the third congressional district to choose a representative in congress constitute "one and

the same election" with the annual town meetings for the election of town officers, then the ballot for congressman and that for town officers may be placed in one envelope. If they do not constitute "one and the same election," the ballot for the representative in congress should be placed in an envelope by itself, which envelope should not contain the ballot for town officers.

In my opinion the meetings of electors, called by the governor pursuant to section 1687 of the general statutes do not constitute "one and the same election" with the annual town meetings for the election of town officers, although the meetings for both purposes are warned for the same day, — the first Monday of October, 1905. I am forced to that conclusion by the following reasons:

Section 1687 of the general statutes authorizing the congressional election in the third district is as follows:

"When any vacancy shall happen in the office of representative in congress from any district, or at large, in this state, the governor shall issue writs of election, directed to those officials whose duty it shall be to warn electors' meetings in the vacant district, or in the state at large, as the case may be, ordering an election to be held, on a day named, to fill such vacancy, and cause them to be conveyed to the sheriffs of the counties composing such district, or in case of the representative at large to the several sheriffs in the state, who shall forthwith transmit them to said officials, who on receiving said writs, shall warn electors' meetings to be held on the day appointed therein, in the same manner as biennial electors' meetings are warned; which meetings shall be organized, conducted and proceeded with as biennial electors' meetings, and said ballots shall be counted, and the vote declared, certified, directed, deposited, returned, and transmitted in the same manner as at the biennial electors' meeting."

The warnings of what may be hereinafter termed the congressional election must, under section 1637 of the general statutes, be issued by the town clerk or his assistant. Section 1795 provides that the warning for what we will hereafter term the town elections shall be issued by the selectmen, except when otherwise specially provided. The warnings of

the two meetings thus issue from different sources, and for different meetings, which in a legal sense are in no way connected with each other.

The hour when the ballot boxes for the congressional election shall close is fixed by statute at five o'clock in the afternoon, unless closed at an earlier hour under authority of a "special enactment of the general assembly," sec. 1646, general statutes. The hour for closing the ballot boxes at town elections varies as the votes of the respective towns may determine.

Section 1815 provides that the ballot boxes for the reception of votes for town officers at town elections shall be kept open not less than five hours. By virtue of votes, duly passed, some towns in the third congressional district close the ballot boxes at town elections for town officers at two o'clock in the afternoon. Yet in those same towns, under section 1646, the ballot boxes in the congressional election must be kept open until five o'clock.

Elections called by different authorities, for different purposes, and differing so radically in the hours of holding them cannot, in contemplation of law, be "one and the same election."

The places of holding the congressional election are not, as fixed by law, in all towns the same as the places fixed by law for holding the town election. Sections 1637 and 1687 of the general statutes provide for the places of holding this special congressional election. Under the provisions of section 1637 an electors' meeting for the election of a congressman must be held in every voting district, in a town divided into voting districts for biennial elections. Thus, if a town in the third congressional district is divided into voting districts for biennial elections, a congressional election must be held in each of these voting districts on the first Monday of October, 1905, and ballot boxes must be provided in each of said voting districts. For, while under section 1637 selectmen of a town divided into voting districts have the power to change the place of holding the election within a voting district, they have not, in my opinion, the power to change the place of voting from one district into another.

Now section 1592 of the general statutes names several towns in the third congressional district which, for electors' meetings, have been divided into voting districts; "and, where so declared by law," for town meetings. But where a town has not been divided by law into voting districts for town elections, but only for biennial elections, the town officers are not elected in voting districts, but are elected at one general town meeting, held at one place. Take, by way of illustration, a town divided into two voting districts for biennial elections, but which is not so divided for town elections, which holds its annual town meeting in the first voting district for the election of officers. Those electors residing in the second voting district can legally vote for a representative in congress only in that district and in no other. They have, however, the right to vote for town officers in the first voting district. Only the electors resident in the first voting district can legally vote in that district for the congressman.

This, of necessity, renders it impossible for an elector resident in the second voting district to place his ballot for congressman in the envelope with that for town officers which he casts in the first district, at the general town meeting. The difficulty arises from the fact that the two elections are not "one and the same elections," and in conducting them they should be kept distinct and separate.

That is, every voting place where ballots are to be cast for representative in congress should have a separate ballot-box for the reception of ballots for such representative. The envelope for the congressional ballot must contain nothing except that ballot. There should be also separate election machinery, envelope booth, checkers, moderator, and other officials precisely as though there was no town election in progress.

In towns in which there are no voting districts the two elections may, of course, be conducted in the same building, but to comply with the law they must be kept distinct from one another, as above stated. In towns divided into voting districts for biennial elections, but not for town elections, the election for congressman in the voting district where the town meet-

ing is held may be conducted for that voting district at the same place as is the town meeting, but it should be conducted as a separate election.

To summarize: The congressional election and the town election are not one and the same election, as referred to in section 1649. They are absolutely distinct and separate.

As to your right to furnish envelopes of uniform color for the congressional election, but differing in color from those furnished for the town elections:

In my opinion you have that right, and I so advise you; but as to whether the exigencies of the situation necessitate the exercise of that right I express no opinion. Section 1634 of the general statutes permits nothing to be printed on the official envelope except "a facsimile of the seal of the state and the date of the election." It will, therefore, not be possible to indicate on the envelope itself at which election the respectively colored envelope is to be used.

As these questions in relation to the congressional election were submitted to you by the respective chairmen of the Democratic and Republican state committees, I deemed it proper to have Charles E. Gross, Esq., of Hartford, act with me in preparing this opinion. He has so acted, and I am authorized to state that he concurs in this opinion on all points.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

RIGHT OF WOMEN TO VOTE ON "FREE TEXT-BOOKS."

The term "electors," as used in Chapter 174 of the Public Acts of 1905, does not exclude women voters.

HARTFORD, Sept. 28, 1905.

HON. THEODORE BODENWEIN, SECRETARY OF STATE,
Hartford, Conn.

My dear Sir: In response to your communication of Sept. 26th reading as follows:

"HON. WILLIAM A. KING,
"*Attorney-General.*

"*Dear Sir:*

"An inquiry has come to this office regarding the right of women to vote on the question of 'Free Text-Books,' and we herewith submit the question to you. Have women the legal right to cast a ballot on this question?

"Very truly yours,
"THEODORE BODENWEIN,
"*Secretary.*
"by R. J. Dwyer."

To determine the question embodied in your communication is not within either the duties or the power of the secretary of state. In a legal sense, it is utterly foreign to the duties of your office.

Neither has the attorney-general any power to determine the question. The duties of his office are defined in section 146 of the general statutes. Included in those duties is that of advising state officers and officials of the state. So long as he acts within the line of his statutory duties his acts are official. Should he attempt to advise moderators of town meetings, either directly or through the medium of a state official, his acts would not be official, and he would be exceeding his powers.

The question which you place before me must, in the first instance, be decided by the moderator of the town meeting.

When a woman voter offers her ballot, for or against free text-books, it is the duty of the moderator to determine whether such woman voter has the right to cast her ballot. But the attorney-general is absolutely destitute of power to officially advise either the voter, as to her rights, or the moderator, as to his duties. Neither would, in the slightest degree, be bound by his advice or opinion, because the matter is entirely outside of the statutory powers of the attorney-general.

It is manifest, however, that great uncertainty exists throughout the state in relation to the act providing that a vote shall be taken on free text-books. This office, as well as that of the secretary of state, has received many communications presenting the question which you submit. Under these circumstances it may not be improper to call public attention to the language of the act, as well as to the statutes conferring on women the privilege of voting.

That part of the act, (chapter 174 of the acts of 1905), which refers to the casting of ballots on this question, uses this language:

"Those electors who are in favor of directing the school officer to purchase text-books and supplies under the provisions of said section 2135 shall deposit in said ballot box a ballot with the words 'free text-books yes' written or printed thereon, and those who are opposed shall deposit a ballot with the words 'free text-books no' written or printed thereon. The ballots cast shall be examined, sorted, and counted, and the result declared, in the manner provided by law, and if a majority of the ballots so given in have the words 'free text-books yes' said school visitor shall purchase such text-books and supplies under the provisions of said section 2135."

This language, construed strictly by itself, would strongly indicate that no one but an "elector" could cast a ballot on the free text-book question. Women are not "electors," although the statutes confer on them a limited right to vote. Our constitution limits the privilege of becoming an "elector" to "male citizens" (Art. 6th, sec. 2; art. 8th and art. 23d of amendments). Section 1593 of the general statutes makes the same limitation. While this provision exists in our con-

stitution a woman cannot become an "elector," within the constitutional meaning of the word, nor within the statutory meaning, as strictly and legally applied. It is, therefore, self-evident that if the moderator of a town meeting adopts as his construction of the act that none but "electors" can cast a ballot, he must, as a necessary result of such construction, refuse to allow the ballot of a woman voter to be deposited in the ballot box.

It is useless to deny that there is great force in the proposition that the act provides for voting by "electors," that women are not "electors," and that women, therefore, cannot vote under the provisions of this act. Considered by itself, this position would seem to be impregnable. It should be remembered, however, that such a construction of chapter 174 of the acts of 1905 would to some extent deprive women voters of the right to vote on "any question relating to education or to schools," conferred on them by section 1629; for the phrase, "any question relating to education or to schools," would, I think, fairly include the question of free text-books.

Stated in another way, to hold that, by the use of the word "electors," the act excludes a woman voter from participating in the vote on free text-books, would be equivalent to repealing in part the statute which confers on such voter her limited right of suffrage.

This right or privilege of voting, however limited, when once conferred by the law, is carefully guarded. It will not be held to be destroyed, in whole or in part, unless the language of the statute so destroying it is clear, unmistakable, and susceptible of no other reasonable construction. I do not think that the language of this act clearly repeals the provisions of section 1629, so far as voting on free text-books is concerned. The whole object and purpose of the act is to *compel* towns to vote on that question, instead of *permitting* them to vote on it, if they saw fit, under the provisions of section 2135. This act says to the town, you *shall* decide this question, while section 2135 said, you *may* decide it. The question submitted to the people is substantially the same in each case. Yet, in the vote provided for in section 2135, women voters were entitled

to participate. If they were not to be allowed to participate in the vote ordered by the act of 1905, the general assembly would have said so, either in unmistakable language, or by some reference to section 1629, which gives women voters the right to vote on "any question relating to education or to schools." The taking away of this right would hardly have been left as a matter of inference from the use of the word "electors," while the statute conferring that right was not referred to and remained in apparently full force.

On a point analogous to this our supreme court, in Middletown vs. R. R. Co., 62 Conn., 498, says:

"Repeals by implication are not favored, and the repugnancy between two statutes must be very clear to warrant a court in holding that the latter in time repeals the other when it does not in terms purport to do so. Cooley's Constitutional Limitations, 1821; Endlich's Interpretation of Statutes, sec. 210; Hartford Bridge Co. vs. East Hartford, 16 Conn., 175. If both statutes can be reconciled they must stand and have a concurrent operation."

There may be some conflict, real or apparent, between different parts of chapter 174 of the acts of 1905, and also between some parts of the act and other statutes. It is hardly debatable that the act, read by itself, permits of a construction that would exclude women voters. Read in connection with other statutes I do not think that it so clearly repeals them by implication as to exclude women voters; and I am of the opinion that, by virtue of the statute conferring on such voters the right to vote on any question "relating to education or to schools," women voters are entitled to vote on the question of free text-books and supplies at the coming annual town meetings.

I take occasion to again say that this opinion is called forth by the conditions and circumstances above adverted to; that the attorney-general has no power to advise the moderator of a town meeting; and that no moderator is, in any way, bound to accept either the advice or opinion of the attorney-general on this question.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

DUTIES OF THE STATE BOARD OF VETERINARY REGISTRATION AND EXAMINATION.

HARTFORD, October 6, 1905.

MR. B. K. DOW, SECRETARY OF THE BOARD OF VETERINARY REGISTRATION AND EXAMINATION.

My dear Sir: — I am in receipt of your communication of Oct. 5th reading as follows:

"The State Board of Veterinary Registration and Examination desire information on the following questions:

"Can the Board refuse registration and license to a person when the Board is satisfied such applicant is not legally entitled to same without first giving said applicant a hearing on his application?

"Can registration and license be refused when the Board is satisfied the applicant has not correctly stated the facts in his application, which he has sworn to be the facts, or must the applicant be given a hearing before the Board can legally refuse such license and registration?

"Is there a penalty for a person taking a false oath, as above stated, in making his application for registration? If so, what is the penalty? I enclose copy of blank on which applications are made, for your examination.

"Can registration and license be legally refused by the Board under section 5, chapter 183, laws of 1905, when the application is made prior to October first, 1905, and the applicant has previously been convicted of a crime and served a sentence in jail for such crime? E.g., Applicant convicted of forgery, and served one and one-half years in State's prison.

"Can any application be legally refused registration and license without the Board first giving the applicant the opportunity for a hearing on such application?"

Sections 2 to 5, inclusive, of chapter 183 of the public acts of 1905 provide for the granting of licenses to practice veterinary medicine, etc.

To a person actually engaged in the practice of veterinary medicine in this state on the 29th day of June, 1905, a license should be granted without examination, provided, that application is made, as set forth in section 2, on or before the first day of October, 1905.

The statute does not provide that any application for a license shall be verified by oath, although I observe that the form of application prescribed by you has attached to it an oath of verification. That part of section 5 which authorizes the Board to refuse a license to a person who has been convicted of a felony does not apply to persons engaged in the practice of veterinary medicine on the 29th day of June, 1905, in this state, and who have made application on or before the first day of October, 1905.

It is the duty of the Board to accept as true the statements made in the application, unless it has reasonable ground to believe that such statements are untrue, in which event it would be the duty of the Board to grant to the person making the application a hearing. If at such hearing it was found that the material facts set forth in the application were not true the Board would be warranted in refusing to grant the license. This power of refusal on the part of the Board should not, however, be exercised until the party making the application has been given a fair and reasonable opportunity to be heard.

Relative to your question as to the penalty for attaching a sworn verification to an application which is untrue in any material fact set forth in the application:

As I have stated above the statute does not provide that the application shall be verified by oath. False statements of material facts made in an application, although not sworn to, would justify the rejection of such applicant, after the Board had given to the applicant a fair opportunity to be heard.

As to whether a crime would be committed by an applicant in making false statements of material facts in the application is not a matter which it is within the power of the attorney-general to determine. Under the statutes he has no duties or powers in connection with this phase of criminal law. If such a case arises it would be your duty to report the facts to the proper prosecuting officer of the jurisdiction within which the case arose.

As to applications made by those who were not on June 29th, 1905, engaged in the practice of veterinary medicine in

this state: The statute provides that in such case an examination shall be had before a license shall issue. The provisions of section 5 as to the disqualification caused by having been convicted of a felony, etc., apply to this class of applicants. If an applicant fails to pass the examination he is not entitled to a hearing in addition to the examination before you can refuse to grant him a license. If, however, such applicant passes the examination, the Board should grant him a hearing before it refuses him a license on the ground that he has been "convicted of a felony or is addicted to any vice to such a degree as to render him unfit to practice veterinary medicine."

The above, I think, covers the questions submitted by you.

If, in any application before you, a question should arise relative to your duties and powers as a board, it would be the duty of the attorney-general if you so desire, to consider the case with you, and advise with you in relation thereto.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

INHERITANCE TAX.

Shares of stock, owned by a non-resident decedent, in a Connecticut corporation, are taxable, even though the corporation is also chartered by the state in which the decedent resided.

HARTFORD, October 16, 1905.

HON. JAMES F. WALSH, TREASURER OF THE STATE OF CONNECTICUT.

My dear Sir: — *In re* the application to the treasurer of the state of Connecticut to waive and not to seek to collect an inheritance or transfer tax on the transfer of five hundred shares of the capital stock of the N. Y., N. H. & H. R. R. Co., belonging to the estate of Mary McG. Means, deceased, resident of Boston, Mass.

You submit to me for advice the above application made to

you by Bristol, Stoddard, Beach & Fisher, attorneys for the executor of the will of said Mary McG. Means.

The application alleges, in substance, that the said five hundred shares of stock are exempt from the operation of the inheritance tax law of Connecticut, because the railroad company in question is incorporated in Massachusetts as well as in Connecticut, and that the State of Massachusetts would not, in "usual practice," subject the stock of the said company owned by a Connecticut decedent to an inheritance tax.

The question submitted is of great importance for, if the applicants are correct in their claim, the State of Connecticut, in this and similar cases, would be deprived of a large amount of revenue.

This precise question has not been before our courts. The supreme court of Massachusetts in Moody vs. Shaw, 173 Mass., 375, considered one phase of the question.

I advise you that, in my opinion, it is not your duty to waive the tax as requested in the application, and that it is your duty to collect the tax.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

CORPORATIONS.

The effect of the provisions of Chapter 281, of the Public Acts of 1905, on the franchises and charters of corporations named therein.

HARTFORD, November 1, 1905.

HON. THEODORE BODENWEIN, SECRETARY OF STATE.

My Dear Sir: — Under date of October 25th, 1905, you submit to me these questions:

(1) "Are the franchises of a corporation, the name of which appears in one of the schedules of chapter 281, acts of 1905, which was delinquent in the making of an annual report,

but filed such report before the said act took effect, annulled, unless said corporation shall pay the twenty-five dollars forfeiture prescribed by said statute on or before the fifteenth day of February, 1906?"

(2) "Are the franchises of a corporation the name of which appears in one of the schedules to said statute but which was not delinquent in the making of an annual report, the name appearing therein by mistake, annulled, unless said corporation shall pay the twenty-five dollars forfeiture therein specified on or before the above mentioned date?"

I quote so much of chapter 281 of the public acts of 1905 as seems material:

Sec. 1. "The corporate existence of the corporations named in the schedules accompanying this act, marked schedules A and B, and which are hereby made part of this act, is hereby annulled to take effect February 16, 1906; provided, that all property rights now existing in favor of or against said corporations, or their officers or stockholders, shall be exempt from the operation of this act."

Sec. 2. "Any corporation named in said schedules which shall, on or before the fifteenth day of February, 1906, make the annual report required by law and shall pay to the secretary of the state a forfeiture of twenty-five dollars shall be exempted from the operation of this act."

In relation to your first question, I advise you that it is the duty of the secretary of state to treat the existence of such corporations as annulled unless the forfeiture of twenty-five dollars is paid as provided by the act.

As to your second question: The act declares that the existence of certain corporations shall terminate at a certain date in the future unless reports shall be filed and forfeitures paid as set forth in the act. The fact that the general assembly by mistake included in the list to be annulled the names of corporations which, as a fact, had not been delinquent, does not authorize the secretary of state to treat those corporations as though their names had not been included. True, the names are included through mistake,—but it is a mistake which the general assembly alone has power to rectify. To erase those names would be equivalent to a repeal of the act

to that extent,— a power which can be exercised only by the general assembly.

I advise you therefore that it is the duty of the secretary of state to treat as annulled the corporations referred to in your second inquiry, unless said forfeiture shall be paid as prescribed in the act.

The injustice resulting to such corporations as are included by mistake in the list is apparent. This injustice you have no power to obviate. There is no doubt, however, that the next general assembly will return the forfeitures paid under the circumstances detailed in your second question.

In advising you as above you will understand that I do not pass on legal questions which may arise between the corporations referred to and parties other than the secretary of state as to the effect of chapter 281 of the public acts of 1905.

This opinion deals only with the duties of the secretary of state in relation to such corporations, and is limited, in its application, solely to those duties.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

POWERS AND DUTIES OF THE DENTAL COMMISSION.

HARTFORD, November 25, 1905.

TO THE DENTAL COMMISSIONERS:

In re your request for a construction of section 10 of chapter 134 of the public acts of 1905:

You desire, as I understand, to be advised on these points:

(1) Whether that one of the commission whom, under section 2 of chapter 134 of the public acts of 1905, you

appoint as your "official recorder," is warranted in employing clerical assistance in the work of the commission.

(2) As to what payment you are entitled to receive, under the provisions of this act, for your services, and how the amount of such payment is to be determined.

The general assembly of 1905 repealed all the statutes relating to the dental commission, and in their place substituted chapter 134 of the public acts of 1905. Under the law existing prior to the enactment of that of 1905 the dental commissioners were entitled to only such amount for expenses as would pay the "necessary traveling expenses of the commission, and for necessary books and stationery."

Section 10 of chapter 134 of the public acts of 1905 provides for payment for your services and expenses in this language:

"Sec. 10. The recorder shall keep an account of all moneys received by him, and shall, annually, in November, render his account to the comptroller; and shall pay from the moneys received by him all proper bills for the services and expenses of the commissioners and recorder, and for all necessary books and stationery, and shall keep all files, receipts, and records in his possession and deliver the same to his successors in office."

The act of 1905, by using the word "expenses" in place of the more limited phrase "traveling expenses" used in the former law, authorizes you to incur any reasonable expense, which becomes necessary in the performance of your official duties. It, of course, includes traveling expenses, but also all other necessary expenses.

I therefore advise you that the act of 1905 authorizes you to employ such clerical assistance as may enable you to properly, and in a reasonable manner, discharge your duties as commissioners. The act does not provide for a clerk for the commission. It merely permits you to employ clerical assistance when the proper performance of the duties imposed on you makes such clerical assistance a necessity. The power of deciding that the necessity for clerical assistance exists as well as the extent to which it is required, rests, in the first instance, with the commission. In my opinion, however, your

decision on this matter is subject to review by the comptroller, when you render your annual account, and I advise you accordingly.

As to payment for your services: Prior to the act of 1905 the dental commissioners were not entitled to any payment or compensation for their services. Section 10 of that act provides that the recorder "shall pay from the money received by him all proper bills for the services and expenses of the commission * * * * ."

This apparently means that the commissioners are to be paid for their services, provided the recorder has received enough money to enable him to pay them. The language of the act does not clearly indicate that expenses are to be preferred in the order of payment; but I advise you that the expenses should be first paid, and that any balance of the receipts remaining in the hands of the recorder would then be applicable to payment to the commissioners for services.

The act simply says that your bills for services are to be paid out of these receipts. It does not say how much you shall be paid, nor whether such payment shall be based on a per diem sum, or an annual salary, neither does it state how the amount of such compensation shall be fixed.

These circumstances make it necessary to consider the subject in a practical light, and adopt such course as will most probably effectuate the purpose of the statute.

I therefore advise each commissioner to present to the recorder, at the time of the annual accounting, a bill for services, itemized as to days, and embodying what the commission considers a reasonable *per diem* charge. This charge would be subject to review by the comptroller. The balance of receipts in the hands of the recorder, after payment of expenses, would be applicable to the payment of those bills for services, if approved by the comptroller.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

SALE OF LAND BELONGING TO THE STATE.

The treasurer has no power to sell lands belonging to the state, except in cases where special provision is made by statute.

HARTFORD, Dec. 6, 1905.

HON. B. FRANK MARSH, DEPUTY TREASURER,

Hartford, Conn.

My dear Sir: I have your communication *in re* the application of the Norwich Hospital for the Insane, asking that certain lands owned by the State of Connecticut in connection with the Norwich Hospital be leased or sold to the Norwich, Mystic & Westerly Railway Company for the purpose of allowing such railway company to build its line to said hospital and do other things in connection therewith.

Your communication requests my opinion "as to the advisability of acceding to the request for this transfer, and whether, if advisable, the quitclaim deed or the lease would be the better."

I do not doubt that the lease or transfer requested would be beneficial to the Norwich Hospital. If the general assembly was in session I think it would authorize such leases to be made as might be necessary to accomplish the object which the hospital is seeking to attain. I am obliged to say, however, that upon an examination of the law I am satisfied that the treasurer of the state has no power to lease or deed any of the land in question. Section 91 of the general statutes, under which it has been claimed that the treasurer had the power to so dispose of the lands, reads as follows:

"The treasurer may appoint agents to manage all property to which the state may become legally entitled, except property of the school fund; to sell any such property, not necessary for the use of the state, at public or private sale, for cash, or on credit, on such terms as the treasurer may approve, who may execute any conveyances thereof, and shall render an account of his proceedings to the general assembly, if in session, or to the governor during the recess of the general assembly, but if the owner of such property ap-

pears, he shall be entitled to it, or, if sold, to the avails thereof, after deducting the necessary expenses."

In my opinion this section does not authorize action of the nature sought in the application to you.

Since its enactment in 1712 the statute which now appears as section 91 has related to the power which the treasurer might exercise over property which has escheated to the state. Since 1712 it has undergone some minor changes, but as late as 1875 it appeared in the statutes under the head of "Escheats."

It undoubtedly authorizes the treasurer to make disposition of property of which the state becomes possessed by reason of escheats, judgments, or similar processes. But it has no application to property obtained and held by the state as in the case of the land in question.

Under these circumstances I feel compelled to advise you that you have no power, as treasurer, to either lease or deed the land.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

THE REFUNDING OF TAXES COLLECTED FROM NEW YORK LIFE INSURANCE COMPANIES.

Joint Resolution No. 213, adopted by the General Assembly at its January Session, 1905, confers on the Insurance Commissioner the power of determining the amount of taxes to be refunded; and in reaching such determination he must apply the New York law, which limited, in that state, the time for presenting claims for such refund.

HARTFORD, Dec. 23, 1905.

HON. THERON UPSON, INSURANCE COMMISSIONER.

My Dear Sir: — In response to your request to be advised as to your duties in the matter of "refunding" taxes to the New York life insurance companies:

Life insurance companies, transacting business in the state

of New York during 1901 to 1903, inclusive, were subjected to an annual tax of one per cent. on all business so transacted. New York claimed to exercise this power to tax by virtue of the provisions of chapter 118 of the (N. Y.) laws of 1901.

Connecticut life insurance companies were compelled to pay this annual tax to New York on business transacted in that state in the years 1901 to 1903, inclusive.

Section 2450 of our revised statutes provides that insurance companies of another state, transacting business in Connecticut, shall pay the same taxes to this state as are imposed by such other state on Connecticut insurance companies transacting business in that state. Because of this section, the New York life insurance companies paid to Connecticut a tax of one per cent. on the business of 1901, 1902, and 1903, transacted by those companies in this state. This tax consisted of one per cent. of the premiums received by the New York companies on business transacted in this state, during those three years, regardless of the dates when the policies were issued on which those premiums were paid.

In October, 1904, the New York Court of Appeals decided that New York had misconstrued the law, (chapter 118 of the New York laws of 1901), under which the tax had been imposed. The court, in substance, held that the law did not tax premiums received on policies which had been issued before January 1st, 1902; that the collection of any tax on premiums received in 1901 was unwarranted; and that the tax collected on premiums received in 1902 and 1903 was equally unwarranted, except as to premiums received on policies issued on or after January 1st, 1902. Thus, as most of the tax collected in each state had been on premiums paid on policies issued before January 1st, 1902, New York had collected from Connecticut companies taxes aggregating many thousands of dollars, without warrant of law; and the New York companies claim that Connecticut, in like manner, had collected from them, without warrant of law, taxes in excess of $70,000.

One session of the legislature of New York has intervened since the court of appeals construed this tax law, but

no action was taken looking towards the return of these illegal taxes to the Connecticut insurance companies.

In response to their demands for the money thus illegally taken from them, the Connecticut companies were relegated for relief to section 195 of the (N. Y.) tax laws of 1896, which provides as follows:

"The comptroller may, at any time within one year from the time any such account shall have been audited and stated, and notice thereof sent to the person, partnership, company, association or corporation, against whom it is stated, revise and readjust such account upon application therefor by the party against whom the account is stated, or by the attorney-general, and if it shall be made to appear upon any such application by evidence submitted to him or otherwise, that any such account included taxes or other charges which could not have been lawfully demanded, or that payment has been legally made or exacted of any such amount, he shall resettle the same according to law and the facts, and charge or credit, as the case may require, the difference, if any, resulting from such revision or resettlement upon the accounts for taxes of or against any such person, partnership, company, association or corporation. Such credit, whether allowed before or after the passage of this act, may be, by the person, partnership, company, association or corporation in whose favor it is allowed, assigned to a person, partnership, company, association or corporation liable to pay taxes under article nine of this act, and the assignee of the whole or any part of such credit on filing with the comptroller such assignment shall thereupon be entitled to credit on the books of the comptroller for the amount thereof on the current account for taxes of such assignee in the same way and with the same effect as though the credit had originally been allowed in favor of such assignee. The comptroller shall forthwith send written notice of his determination upon such application to the applicant, and to the attorney general, which notice may be sent by mail to his post-office address."

Section 195, above quoted, as construed by New York, places two restrictions on Connecticut insurance companies in recovering these illegal taxes from New York,— (1) that the application for the recovery must be made to the comptroller of New York within one year from the date when the bill or statement calling for the payment of the tax was rendered to

the Connecticut company; (2) that the repayment is not to be made in cash, but by a credit, receivable by New York in payment of other taxes, etc.

You will understand that the above is the construction which New York has placed on section 195, above quoted, and that the above restrictions have been actually applied by New York to every claim made by a Connecticut insurance company for a return of these taxes. Because of the first restriction, to which I have called your attention, a great part of the illegal taxes collected by New York from Connecticut companies has not been, and manifestly never can be, recovered. To illustrate:

The Connecticut companies annually paid the illegal taxes to New York on business transacted in 1901, 1902, and 1903. Assume that on May 1, 1902, the bills, or statements, of taxes due on the 1901 business were rendered to the companies by New York. That state holds that, under Section 195, above quoted, the illegal taxes so collected for the year 1901, cannot be repaid to the Connecticut companies unless claims for repayment were made within one year of the date of said statements,— May 1, 1902. As the New York court of appeals did not pronounce the tax illegal until October 18, 1904, hardly any claims have been made by Connecticut companies or allowed by New York for the return of the 1901 or 1902 taxes.

While this state of affairs was existent, and while New York was withholding from Connecticut companies approximately $85,000, the Connecticut general assembly, at its recent session, adopted the following resolution:

Senate Joint Resolution No. 213.

Resolved by this Assembly:

That the board of control is hereby authorized to appropriate an amount not exceeding in the aggregate the sum of seventy-five thousand dollars, said sum to be in addition to the total amount to which said board of control is limited by law or otherwise authorized to make appropriations, for the purpose of refunding to life insurance companies of the state of New York such sums paid by such companies as taxes upon premiums received from business transacted in the state of Con-

necticut during the years 1901, 1902, 1903, and 1904, as the insurance commissioner of Connecticut shall determine should be so refunded under the provisions of existing law and shall so certify to the comptroller.

The only power which the insurance commissioner, or any other official, possesses, in this matter of returning to the New York companies any part of these alleged illegal taxes, is derived from this resolution; it embodies your entire duty in the premises.

Counsel for the Mutual Life Insurance Company of New York, the Metropolitan, and the New York Life, claim that under this resolution the insurance commissioner is to merely compute the total amount of excess taxes collected from each New York company, and certify to the comptroller those arithmetical results; that the entire $70,000 should be then handed back to the several New York companies; and that your duty is purely clerical and has been fully performed when you have determined and certified to the difference in amount between one per cent. of the premiums on which the tax was assessed, and one per cent. of the premiums on which, under the New York decision, the tax should have been assessed. Such a construction would result in Connecticut returning to the New York companies the entire amount of this excess of tax, while New York has returned to Connecticut companies only a fractional part of the tax illegally assessed against, and collected from, Connecticut companies.

The history of senate joint resolution No. 213, as it appears in the legislative journals, would, of itself, cause one to hesitate before adopting the construction claimed by the New York companies.

The journal of the senate shows that it was introduced in the senate, under suspension of the rules, on the 14th of July, —at the very close of the session. It was adopted by the Senate on that day, transmitted to the house under suspension of the rules, and adopted by that body on the same day. (In the house journal it appears, evidently by mistake, as senate joint resolution No. 217.) So far as the legislative journals indicate there was no debate on the resolution in either body. It was apparently never before a committee.

In view of the attitude of New York towards Connecticut companies, it would seem highly improbable that the General Assembly would, in this manner, adopt a resolution subjecting the state to an absolute payment of approximately $70,000. Especially does such action seem improbable in the light of the settled policy of Connecticut law toward the insurance companies of another state,— which, briefly stated, consists in treating the companies of another state exactly as that other state treats Connecticut companies.

The language of the resolution does not absolutely order the return of these taxes to the New York companies. It *authorizes* the Board of Control to appropriate money to "refund" so much of them as the insurance commissioner "shall determine should be so refunded under the provisions of existing law."

I advise you that the phrase, "under the provisions of existing law," must be read and considered by you in conjunction with section 3606 of the revised statutes, which provides as follows:

"When any state shall impose any obligation, prohibition, or restriction upon insurance companies, corporations, or associations of this state, or their agents transacting business in such other state, the like obligations, prohibitions, and restrictions are hereby imposed on similar companies, corporations, and associations of such other state, and their agents transacting business in this state."

I further advise you, by virtue of section 3606, to apply to the claims of the New York companies, the limitation of one year within which to present claims (section 195 of the New York tax laws of 1896), which New York has applied to the claims of Connecticut companies.

You inform me that on May 31, 1902, the Mutual Life Insurance Company of New York filed with you a statement claiming, in substance, a return of $5,736.57, the excess of tax paid on May 31, 1902, (being the tax on the premiums received in 1901, the bill or statement of which tax had been rendered by you to said company on May 6, 1902).

On May 26, 1903, the same company filed a similar claim

for $5,232.88, and within one year of the date, (May 19, 1903), when the bill for the tax was rendered by your department for the year 1902.

As I understand from you that these amounts, $5,736.57 and $5,232.88, are correct, I advise you to certify to the comptroller that they should be refunded to said Mutual Life Insurance Company.

As no other company has filed a claim within one year of the date of statement rendered, I advise you that the two amounts, above mentioned, in the case of the Mutual Life, are the only amounts which you should determine ought to be refunded under the "provisions of existing law,"— and the only amounts you should certify to the comptroller.

The New York companies claim interest on these sums collected as taxes. As I advise you to certify for refunding only the above specified amounts to the Mutual Life Insurance Company, it is unnecessary to discuss the subject of interest, except so far as it applies to them. It is manifestly just that interest should be allowed on these amounts from the dates of their payment to the state until the date of your certificate to the comptroller. Your power, however, is limited by the terms of senate joint resolution No. 213. In my opinion this does not confer on you the power to certify to anything beyond the face amount of the excess of taxes. I, therefore, advise you that you should not add interest to the amount which you certify to the comptroller.

As to whether Connecticut should enforce the credit system of repayment, adopted by New York, is for the Board of Control, rather than the insurance commissioner, to determine. Senate joint resolution No. 213 clearly authorizes the Board of Control to "refund" in cash, the sums certified to by you. To that extent the resolution modifies section 3606 of the general statutes.

On the last page of the brief submitted by counsel for the Metropolitan and New York Life Insurance Companies the following statement appears:

"To whatever conclusion the commissioner may come, we respectfully submit that under the provisions of this resolution,

he is required to determine and certify to the comptroller the various amounts which ought to be refunded to the New York companies, in each year, under the provisions of section 2450. If he is also of opinion that the right to a refund has been barred by the New York sec. 195, in any case, he should also certify that fact to the comptroller."

Now the object and purpose of this statement, which amounts to a request, may not be to facilitate proceedings in the nature of mandamus against the insurance commissioner. I advise you, however, that senate joint resolution No. 213 makes it your duty to certify to the comptroller only such sums as you "shall determine should be so refunded under the provisions of existing law," and that it is not your duty to certify to the comptroller in relation to amounts or claims which you may decide should not be refunded.

The figures in your possession representing the amounts of excess taxes collected from each company have been furnished your department in the sworn statements of the officers of the several companies. Presumably these figures are also in the possession of the several companies. Still, if any of the companies in question, or counsel representing them, request you to furnish statements showing the amount of excess taxes collected in each of the three years, I think you should comply with the request.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

INVESTMENTS BY SAVINGS BANKS.

Under the provisions of Chapter 207 of the Public Acts of 1905, certain bonds of the Meriden Electric Railroad Company became legal investments for savings banks.

HARTFORD, January 29, 1906.

HON. CHARLES H. NOBLE and
HON. GEORGE F. KENDALL,
BANK COMMISSIONERS.

Gentlemen: — Chapter 207 of the public acts of 1905 pro-

vides that "savings banks may invest their deposits and surplus in all bonds of the Consolidated Railway Company."

On June 29, 1904, the Consolidated Railway Company became vested with all the property, franchises, etc., of the Meriden Electric Railroad Company. This last named company was originally the Meriden Horse Railroad Company, and, under that name, had issued, to the amount of $500,000, thirty year, five per cent. gold bonds, secured by mortgage on its property, running to the treasurer of Connecticut as trustee. These bonds bear date the 28th of December, 1893.

When the purchase of the Meriden Railroad was made, as above stated, these bonds were outstanding together with the mortgage securing them, and the Consolidated Railway Company assumed the mortgage and obligated itself, in legal effect, to pay the bonds.

You request me to advise you whether, under these circumstances, these Meriden Horse Railroad bonds are included within the words of chapter 207, "all bonds of the Consolidated Railway Company": that is, whether, by virtue of that act, these bonds are a legal investment for Connecticut savings banks. In other words, does the language used in the act include all bonds which the Consolidated Railway has obligated itself to pay, or does it include only the bonds *issued* by that company itself?

The language of the act is not free from ambiguity, and the actual intent of the general assembly is left uncertain.

Were it permissible to discover the actual intent of the general assembly from sources other than the language of the act, the ambiguity attaching to chapter 207 might be eliminated. The chairmen of the joint standing committee on banks (Senators Atwood and Peck on the part of the senate, and Representative Thompson on the part of the house), in response to my inquiry, state to me that in reporting favorably on the measure, it was intended to include all bonds which the Consolidated Railway Company should obligate itself to pay, whether issued by that company or not; thus excluding all bonds of railroads taken over by the Consolidated Railway Company, which bonds said company did not obligate itself to pay.

Now while this actual intent, except so far as it is embodied and apparent in the act, itself, may not be considered in construing the act, yet the circumstances which produced that intent may be properly considered. As applied to the bonds of the Meriden Railroad, under discussion, those reasons were in substance these:

At the time the act was passed the Consolidated Railway Company had outstanding debenture bonds to the amount of approximately $10,000,000. These were not secured by mortgage,— yet they were confessedly admitted, by the act, to become legal investments.

The bonds of the Meriden Railroad Company, when assumed by the Consolidated Railway Company, had substantially behind them all that was behind the debenture bonds, together with the additional element of safety that they were secured by mortgage on the property of the Meriden Electric Railroad Company.

Since the committee on banks had decided to include the unsecured debenture bonds of the Consolidated Railway Company as a legal investment for savings banks, there would seem no good reason why other bonds, which that corporation was equally obliged to pay, should be excluded,— especially when those other bonds had the additional security of being predicated on a mortgage. Indeed, an act which would admit the unsecured debenture bonds of a corporation, and exclude bonds which the same corporation was equally bound to pay, and which were also secured by mortgage, would be apparently illogical.

I think, therefore, that we may justly and properly infer from the situation itself, and the attendant circumstances, that the purpose of the act embraced the admission of these bonds of the Meriden Electric Railroad Company, as well as the debenture bonds of the Consolidated Railway Company.

Now in determining whether this intent was effectuated by the language of the act it becomes necessary to consider not merely the fact that the Consolidated Railway Company had assumed the bonds of the Meriden Company, but also the relationship, of the nature of a merger, existing between the two corporations.

The Consolidated Railway Company was originally the Thompson Tramway Company, and was incorporated in 1901, Section 7 of the charter (Special Acts of 1901, page 748), conferred on it these powers:

This corporation may mortgage, sell or lease the whole or any part of its property, including franchises and leases and including after acquired property, may make any lawful contracts with any other persons or corporations, may purchase, hold, and enjoy stock, bonds, property leases, or franchises of any other corporations, may issue its bonds and full paid stock at its par value towards paying for any such purchase to an amount not exceeding the purchase price, and towards paying for the cost of constructing or equipping an electric railroad, and may also *merge, consolidate, and make common stock with other corporations* under the name of either of them, but with all of the powers of the corporations merged or consolidated.

In the exercise of this power to "merge, consolidate, and make common stock with other corporations," the stockholders of the Consolidated Railway Company, at a meeting held at New Haven on May 27, 1904, passed this vote:

"VOTED, That this company purchase for seven hundred and fifty thousand dollars ($750,000.) the property, rights, and franchises of the Meriden Electric Railroad Company and agree to assume all the now existing liabilities of said company, except its floating debt amounting to two hundred and fifty thousand dollars ($250,000), and that to this end the execution by the President of this company in its name and behalf of such instrument or instruments in writing as he shall deem proper or convenient to carry this vote into effect is hereby approved and authorized."

On the same day (May 27, 1904) the Meriden Electric Railroad Company, at a duly warned meeting, voted:

"That all the property, rights, and franchises of this company, except the franchise to be a corporation, be sold to the Consolidated Railway Company for seven hundred and fifty thousand dollars ($750,000), upon the agreement of said company to assume all the existing liabilities of

this company except its floating debt amounting to two hundred and fifty thousand dollars ($250,000); and that the President of this company is hereby authorized to make arrangements concerning the manner and terms of payment of said sum, and to execute and deliver from time to time in the name and behalf of this company an instrument or instruments in writing in such form as he shall deem best and as shall be approved by the counsel of this company to carry into effect the purposes of this vote."

In furtherance of the above votes, and of the exercise of the power to merge, the two corporations entered into an indenture on June 29, 1904, whereby the Meriden Company transferred its property, franchises, etc., to the Consolidated Railway Company.

In and by that indenture the Meriden Railroad Company, sold, granted, and conveyed to the Consolidated Railway Company " all the franchises, rights, and privileges of the said railroad company, together with its railways now constructed and in operation in the city and town of Meriden, and the borough and town of Wallingford, in said state, including all the franchises acquired by purchase and transferred from other corporations, together with all the rights under the ordinances of and agreements with the city and town of Meriden and the borough or town of Wallingford, or acquired under or by virtue of any order of or permission from any public officer or municipality, together with the tracks, roadbed, buildings, rolling stock, tools, leases, books, securities, cash, and property of every nature, real and personal, and every interest therein, whether legal or equitable, and whether hereinafter specified or not; the object and intent of this contract and agreement *being to merge the rights, powers, and privileges of the Railroad Company,* so that the railway company under its own charter, corporate name and organization shall, without impairing any existing right, exercise in addition thereto all the powers, rights, privileges, and franchises, and own and control all the properties that the railroad company now exercises and owns, or by its charter and by-laws has no right to exercise or control.

PROVIDED, HOWEVER, that the franchise of the railroad company, to be and remain a corporation until such time as may be hereafter agreed upon for its dissolution, shall not be impaired or infringed upon by anything contained in this indenture.

The Meriden Electric Railroad Company is still existent as a corporation, in that it has not been dissolved; but all its powers, franchises, etc., are merged with those of the Consolidated Railway Company. The latter corporation is exercising all the franchise powers originally conferred on the Meriden Company, has taken over its property, and has assumed its bonds. This condition practically constitutes the merger that the charter of the Thompson Tramway Company, in Section 7, above quoted, authorized and empowered. (See Noyes on Intercorporate Relations, sections 7-14 and sections 58-63.)

By a resolution approved May 25, 1905, since the date of the merger of the two corporations, and before the passage of the act admitting these bonds, vast powers in the matter of consolidating with other corporations have been conferred by the general assembly on the Consolidated Railway corporation,— (Special Acts of 1905, pages 706-716). In the preamble of the resolution (which is an amendment to the charter), the merger of the two corporations is recognized, and to that extent ratified by the general assembly in these words:

"Whereas the corporation originally created as the Thompson Tramway Company, whose name was changed to the Worcester and Connecticut Eastern Railway Company, and afterwards to the Consolidated Railway Company, has by virtue of the powers granted in its charter acquired by purchase and now holds, enjoys, and exercises the property and franchises of certain corporations of this state, to wit: (Enumerating ten electric railway corporations, among them the Meriden Electric Railroad Company).

It is not necessary to determine what would be the legal effect of the assumption of the indebtedness, unaccompanied by the merger,— nor the effect of the merger apart from the assumption of the indebtedness. In my opinion the effect of the assumption of the indebtedness, together with the merger, brings the bonds under discussion within the term "all the bonds of the Consolidated Railway Company."

I therefore advise you that the thirty year, five per cent. gold bonds, issued by the Meriden Horse Railroad Company,

are a legal investment for savings banks, by virtue of the provisions of chapter 207 of the public acts of 1905.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

THE CONNECTICUT AGRICULTURAL COLLEGE.

Powers and duties of the trustees in the matter of accepting bequests to the College.

HARTFORD, April 11, 1906.

MESSRS. RUFUS W. STIMSON,
L. J. STORRS, and
CHARLES A. CAPEN,
Committee appointed by the Trustees of the Connecticut Agricultural College.

Gentlemen:—I have before me your communication of April 9th, reading as follows:

"The undersigned, having been appointed by the trustees of the Connecticut Agricultural College a committee for the purpose herein expressed, do hereby respectfully request that you will give us in writing your opinion whether or not the trustees of said college can lawfully accept the legacy and devise made to said college by Edwin Gilbert, deceased, late of Georgetown, Connecticut, by his last Will and Testament and a codicil thereto, a copy of which is herewith submitted for your inspection.

Yours very truly,
RUFUS W. STIMSON,
L. J. STORRS,
CHARLES A. CAPEN,
Committee."

I quote the language of the codicil embodying the bequest, and the conditions attached thereto:

"Twelfth: I revoke the devises and bequests made to my wife in the seventh and eighth clauses or paragraphs of my cod-

icil of December 3rd, 1904, and in lieu thereof I do give, devise and bequeath all the real estate in said eighth clause of said codicil of December 3rd, 1904, and all the tools, machinery, agricultural implements, and live stock that may be thereon at my decease to the Storrs Agricultural College of or at Storrs, Connecticut, upon condition however, that the same be taken and maintained in connection with said college as a farm and for the purpose of teaching or instruction in farming practically, and I do further give and bequeath to said college twelve hundred shares of the capital stock of said company, said stock not to be sold and the income thereof devoted to the care of the real estate herein devised, and instruction in the science of farming as taught by said college, and especially the art of raising and caring for live stock."

In relation to the power of the trustees to take and hold gifts for the maintenance of the college, section 4395 of the general statutes provides as follows:

Section 4395: "Said board of trustees may hold in behalf of the state such lands, money, and other property, as may be donated to it for the purpose of maintaining said college."

The phrase, "for the purpose of maintaining said college," used in the statute, does not demand a technical construction. In my opinion the trustees are empowered by the statute to accept and hold property which is reasonably calculated to promote the objects for which the college was established, even if such property does not add to the general income of the college. Thus, for example, the trustees may accept the gift of a library for the college although such a gift might not be of any financial assistance towards maintaining the college. To warrant the acceptance of a gift, under the statute, the property must be reasonably adapted to promote the interests of the college as established. The college is not a corporation. It is a state institution, established at a certain place, supported by the state, and managed by trustees who represent and act for the state.

The subject-matter of the Gilbert devise and bequest consists of about three hundred acres of land, together with personal property including twelve hundred shares of the stock of the Gilbert & Bennett Manufacturing Company. The

land is located approximately one hundred miles from the college. It is given on the condition that " it be taken and maintained in connection with said college as a farm, and for the purpose of teaching or instruction in farming practically." The stock of the manufacturing company cannot be sold, but the income is to be devoted to the care of the land " herein devised and instruction in the science of farming as taught by said college, and especially the art of raising and caring for live stock."

The trustees have not the power to accept this gift for the purpose of establishing a branch of the college where the land is situated, nor anything akin to a branch; neither have they the power to accept the gift for the purpose of promoting instruction in the science of farming, in any of its branches, except so far as it will promote, at the Connecticut Agricultural College, at Mansfield, the objects for which that college is established.

If, however, the trustees are fully satisfied that in spite of the distance of the land from the college, and of the conditions attached to the gift, the objects and purposes of the college at Mansfield, as established by the state, will be promoted by the acceptance of the gift,— if they are so satisfied, then they have the legal right to accept and hold, for the state, the devise and bequest of the land and personal property.

As stated above the trustees represent the state. Before accepting a gift of this nature, to which are attached conditions more or less onerous and difficult to fulfill, it is the legal duty of the trustees to be fully satisfied that the acceptance of the gift will inure to the maintenance of the college as established, and that the result of such acceptance will be, through the college, a benefit to, and not a burden on, the state. Unless the trustees are so satisfied an acceptance of the gift would be a violation of the legal duty imposed on them by law.

The attorney-general has not the power to determine the facts on which the decision of the trustees should be based. He can advise only as to the duties imposed and the powers conferred, by the law, on the trustees. To determine the facts outlined above,— whether the acceptance of this gift,

with the conditions attached to it, will promote the objects of the college as established, whether the benefits of the gift outweigh the burdens of the conditions attached to it,— to determine these facts is solely within the power of the trustees, subject only to possible review by the general assembly.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

IN RE THE ACCEPTANCE BY THE STATE OF THE PROVISIONS OF THE ACT OF CONGRESS AUTHORIZING THE EXCHANGE OF ORDNANCE.

HARTFORD, April 20, 1906.

THE ADJUTANT-GENERAL,

State of Connecticut.

Sir: — I have before me the following communication from you under date of April 20, 1906:

The State of Connecticut, in arming its militia after the Spanish-American War, purchased from the United States Government a battery of guns to arm the Field Artillery, paying therefor the sum of $12,405.08. The guns are too heavy a caliber for our use, and have been discarded by the Regular Army; but they were all the Quartermaster-General could get at the time, so he had no choice in the matter. He, however, made a contract with the Chief of Ordnance that these guns should be returned, and a battery of smaller caliber guns issued in their place, when the same was adopted by the Ordnance Department; the State to pay to the United States Government the difference in the cost. A 3″ gun was finally adopted by the Ordnance Department and issued to the Regular Batteries, U. S. Army, and the United States Government has furnished for the use of the State of Connecticut a battery of these guns, costing from fifty-two to fifty-five thousand dollars free of charge to the State. This, however, leaves the battery of heavy guns on my hands, and they are in the State Arsenal, and, of course, depreciating meanwhile. I have ordered a board of survey on these guns, and they have been con-

demned. Under a long continued practice of the department, this would authorize the sale of the guns; but there is no market for them, and I do not believe that they could be sold for over five hundred dollars. In view of these facts a bill was introduced in the Senate by Senator Bulkeley, which has now become a law, a copy of which is enclosed, herewith, authorizing the Chief of Ordnance, U. S. Army, to receive back these guns, and to place the amount originally paid for them ($12,405.08) to the credit of the State, against which the State may draw, when it sees fit, equipment of various kinds, as required for our National Guard.

I desire your advice as to my power and authority to turn back to the United States Government this battery of heavy guns on these terms. It is manifestly of great advantage to the State to do it, in view of the fact, that by having this credit of the full amount paid by the State for these guns, it will then not be necessary at the next session of the legislature to ask for as large an increased appropriation for articles of clothing and equipment absolutely needed to replace a quantity of stores condemned by the United States Army Inspectors during the last inspection.

Respectfully,

GEORGE M. COLE,

Brig.-General, C. N. G.,

Adjutant-General.

I quote the Act of Congress to which you refer:

"Sec. 1. That the Chief of Ordnance, United States Army, is hereby authorized and empowered to receive back from the State of Connecticut the four three-and-six-tenths-inch breech-loading field guns, carriages, caissons, limbers, and their pertaining material which were sold to the State by the Ordnance Department for the sum of twelve thousand four hundred and five dollars and eight cents on July twentieth, nineteen hundred and one.

"Sec. 2. That no part of the value of this material shall be paid to the State of Connecticut, but the whole amount received from the sale thereof to the State shall stand as a credit to the quota of the State, the same as though allotted from the annual appropriations under the provisions of section sixteen hundred and sixty-one, Revised Statutes, as amended, and subject to all the conditions thereof.

"Sec. 3. That the sum of twelve thousand four hundred and five dollars and eight cents is hereby appropriated, from any money in the treasury not otherwise appropriated, for the purpose of carrying this Act into effect."

It is manifest from the act that its sole purpose was to benefit the state. The question submitted is practically whether the state has the power, without special legislative action, to avail itself of the beneficial provisions of the Act. If the state possesses and exercises such power, it will receive the equivalent of a sum in excess of $12,000 for property already condemned, which, if otherwise disposed of, would realize only a few hundred dollars.

In my opinion the state, without special legislative action, has the requisite power to accept the provisions of the act.

I therefore advise you that the treasurer of the State, acting in conjunction with you, can lawfully transfer the battery to the United States Government, in accordance with and on the terms set forth in said act.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

COMMITMENT OF AN INDIGENT INSANE PERSON.

The Hospital may legally refuse to receive an indigent person committed on and by commitment papers which do not disclose the residence of such indigent person.

HARTFORD, May 21, 1906.

HENRY S. NOBLE, M.D.,
Superintendent Connecticut Hospital for the Insane,
Middletown, Conn.

My Dear Sir: — In response to your request to be advised as to your power to refuse to receive an insane person when the

order of commitment does not set forth the town of which the court of probate finds the insane person to be a resident at the time of commitment:

I quote so much of chapter 196 of the public acts of 1905 as directly applies to the subject-matter of your inquiry:

> The judge making the order of commitment shall state therein the town of which he finds such indigent insane person to be a resident, and the amount of his estate so reported to said court as aforesaid. In case thereafter the person legally obligated to pay for the support of such indigent insane person, under said order, at such insane hospital, shall fail to make payment for said support, the authorities of such insane hospital shall notify, by registered mail, the treasurer of the municipality of which such indigent insane person was in the proceeding of commitment found to be a resident, and if the default in the payment for such support shall continue for a period of four weeks from and after the mailing of the said notification to the treasurer, then such indigent insane person shall thereupon be deemed to be a pauper, and the expense of his support, including unpaid arrearages accumulated since the mailing of the said notification, except such part as is paid by the state, shall be paid by the said municipality. The report of such selectmen as to the residence of such indigent person and the action of the court of probate thereon shall be deemed prima facie evidence only that such indigent person is a resident of such town, and any expenses for the support of such indigent person paid by a town under the provisions of this act may be recovered by such town from any person legally liable for his support or from any town in this State to which such person is legally chargeable."

In all cases of commitment of paupers the law definitely fixes the liability for their support, to the extent of two dollars per week for each patient, on the town whose selectmen apply for the commitment. Thus the state is protected against loss, to the extent above set forth, in the cases of pauper commitments.

In the commitment of what is known as "indigent" insane persons, the state was theoretically, but not actually, protected from loss for their support. The law, it is true, provided that the person applying to the court of probate for the commit-

ment of an indigent insane person, not a pauper, should pay the state two dollars per week for his support. This obligation was assumed to be secured by a bond with surety. It was not however a matter of infrequent occurrence for the person thus obligated, as well as the surety, to fail to make the payments to the state. It then devolved on the hospital, or the state, to discover, if it could, the pauper settlement of such indigent insane patient, and recover the two dollars per week from that town; if, however, the state was unable to locate the pauper settlement of the "indigent" insane person, which, as you know, sometimes occurred, the entire burden of supporting such patient, as a practical proposition, devolved on the state.

To protect the state from the loss arising from this condition of things, chapter 188 of the acts of 1903 was enacted. This act was repealed in 1905, and chapter 196, above quoted, substituted in its place. Under the provisions of this last act the town in which the indigent insane person resides at the time of commitment is made liable for the two dollars per week, in the event that the person applying for his commitment fails to pay. The act protects the state against loss by substituting the liability of the comparatively certain town of residence in place of the liability of the town, often difficult and sometimes impossible to determine, in which the person committed had a pauper settlement.

In order to carry out the purpose of the act, and protect the state, the court of probate, in committing an indigent person, must determine his residence and cause such residence to appear, as determined, in the commitment papers. Failure to do so is a violation of both the letter and the spirit of the act, and deprives the state of that protection which the statute was enacted to afford.

I advise you that the Connecticut Hospital for the Insane may legally refuse to receive any indigent insane person committed to the hospital by a court of probate on and by commitment papers which fail to show the residence of such indigent person at the time of commitment. While this power to so refuse to receive an indigent insane person is vested

primarily in the trustees it may be delegated to you as superintendent by action on the part of the trustees.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

POWERS OF AGENTS OF LIFE INSURANCE COMPANIES.

The provisions of section 3631 of the General Statutes do not apply to agents of life insurance companies.

HARTFORD, June 21, 1906.

HON. THERON UPSON,

INSURANCE COMMISSIONER,

Hartford, Conn.

My dear Sir: — I have before me your communication reading as follows:

"May an authorized agent of a life insurance company that is legally admitted to do business in this state negotiate or effect contracts of insurance or reinsurance with any qualified domestic fire insurance company or its agents, or with the authorized agents in this state of any foreign fire insurance company duly admitted here? Or, in other words, does section 3631 apply to fire insurance business only?"

Sec. 3631. "The authorized agent of any company legally admitted to do business in this state may, without being deemed a broker or procuring a broker's certificate of authority, negotiate or effect contracts of insurance or reinsurance with any qualified domestic insurance company or its agents, and with the authorized agents in this state of any foreign insurance company admitted to do business in this state."

The language of this section, standing by itself, might, perhaps, seem to permit the agent of a life insurance company, under the conditions set forth in your communication, to effect contracts of insurance or reinsurance with a fire insurance company or its agents.

From an examination of the legislation since 1885 on this subject I am satisfied that such is not the true construction of the section.

In my opinion the agent of a life insurance company that is legally admitted to do business in this state may negotiate or effect contracts of insurance or reinsurance with any qualified domestic life insurance company, or its agents, and with the authorized agents in this state of any foreign life insurance company admitted to do business, but such life insurance agent is not authorized, by section 3631, to effect contracts of fire insurance or reinsurance.

I am very respectfully,
WILLIAM A. KING,
Attorney General.

FRANCHISE TAX.

Increase of capital stock, under circumstances stated, does not entitle the state to the payment of $1 per thousand on the amount of such increase.

HARTFORD, June 21, 1906.

HON THEODORE BODENWEIN,
SECRETARY OF STATE,
Hartford, Conn.

Sir: — I have before me the following communication from you, under date of June 21st, 1906:

"HON. WILLIAM A. KING,
ATTORNEY-GENERAL,
Hartford, Conn.

Dear Sir: — On May 29th, 1906, a certificate was filed in this office by a majority of the directors of The Connecticut Fire Insurance Company, certifying that at a meeting of the stockholders of said corporation specially warned for that purpose, and held at Hartford on said 29th day of May, 1906, the action of the directors of said company, at a meeting held May 16, 1906, reducing the capital stock from one million dollars

to five hundred thousand dollars, by the reduction of the number of shares from ten thousand to five thousand, was approved.

On June 20th, 1906, a certificate was filed in this office by a majority of the directors of said company certifying that at a meeting of the stockholders of said corporation duly warned and held for that purpose on the 29th day of May, 1906, the capital stock of said corporation was increased five hundred thousand dollars, making the whole amount of capital stock one million dollars.

Is the Connecticut Fire Insurance Company liable under the provisions of section 57 of the corporation laws, for a tax of one dollar a thousand on its increased capital stock, to be paid to the state, before approval of the certificate of increase by the secretary, as provided by section 47 of said law?

Very truly yours,

THEODORE BODENWEIN,

Secretary."

I quote so much of section 57 of chapter 194 of the public acts of 1905, as directly applies to the question submitted by you:

"Whenever any specially chartered corporation shall vote to increase the amount of its capital stock in accordance with the provisions of this act or of any other general or special law affecting it, such corporations shall pay to the state treasurer, before any shares of such increased capital stock shall be issued, a further tax of one dollar on each one thousand dollars of the total increased capital stock so voted, but no additional franchise tax shall be required upon stock upon which the corporation has paid the full franchise tax required by the law in force at the time of such payment.

Every officer of any corporation subject to any of the provisions of this section, who shall sign or issue any certificate of stock on which the tax imposed by this section has not been paid, shall be fined one thousand dollars, or imprisoned not more than two years, or both."

At the date of the reduction of the capital stock, from one million to five hundred thousand dollars, the Connecticut Fire Insurance Company was entitled to have one million dollars of capital stock without the payment of any franchise tax to the state.

In my opinion the subsequent action in increasing the stock to one million dollars did not bring the company within either the spirit or letter of section 57.

The reduction of the stock and its subsequent increase to the original amount should be treated as one transaction. Viewed in this way there has been no increase in capital beyond the amount which the company was entitled to have without the payment of any franchise fee.

I advise you that you should approve the certificate of increase as provided in section 47 of chapter 194 of the public acts of 1905, without the payment of the franchise fee of one dollar per thousand.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

LIABILITY OF THE STATE FOR DAMAGE DONE BY DEER.

Chapter 108 of the Public Acts of 1905, provides for compensation for damages inflicted by wild deer on growing fruit trees

HARTFORD, September 4, 1906.

HON. GEORGE T. MATHEWSON, COMMISSIONER FISHERIES AND GAME.

Sir: — You request my advice on the following facts which you place before me:

One Joseph Zola, a farmer living in the town of Glastonbury, is the owner of a large peach orchard, containing 400 or 500 peach trees. The land embraced in this orchard is cultivated in accordance with approved methods of peach culture. The trees were set out by Zola and have been cared for and nurtured by him for some time, although none of the trees have attained the fruit bearing age. Some time during the present summer wild deer entered this peach orchard and destroyed nearly all the trees. A claim is pending before the appraisers that the damage, amounting to some hundreds of

dollars, sustained as above, should be paid in accordance with the provisions of chapter 108 of the public acts of 1905, which reads as follows: —

"Section 1. When any person shall sustain damage by wild deer to any crops grown on cultivated land owned or occupied by him, and shall give notice thereof to the chairman of the board of selectmen of the town in which such damage was done within twenty-four hours after his knowledge of the same, said selectman shall appoint two disinterested persons, who, upon determining that such damage was done by deer, shall estimate the amount of said damage; provided, that said damage does not exceed the sum of twenty dollars, but if in their opinion the damage exceeds the sum of twenty dollars, they shall notify one of the fish and game commissioners, who shall assist them in determining the amount of said damage.

"Sec. 2. The amount of damage so estimated or determined as aforesaid, with the expense of estimating or determining the same, shall be paid by such town within sixty days after the amount thereof has been so determined or estimated; and the town treasurer shall, annually, in the month of January, file a sworn statement with the comptroller of the amount so paid for damage done by deer, if any, exclusive of the expense of estimating or determining the same; and the comptroller shall draw his order on the treasurer for the amount of said damage as certified in said statement of the town treasurer."

The first inquiry is whether, under the language of this act, the owner of peach trees destroyed by wild deer is entitled to any compensation for the damage so sustained. The law provides for compensation for damage to "crops grown on cultivated land." The ordinary definition of "crops," as well as the meaning affixed by the courts to the word, would not include fruit trees. Strictly speaking, in relation to trees at least, "crops" consist of the fruits, or products, and manifestly do not include the trees themselves. If, therefore, the word "crops" is to be given its strict, legal meaning, it is absolutely clear that the act does not provide for any compensation for damage to the peach trees.

Such a construction, however, while technically correct, would, at times, defeat the real intent of the law. Indeed, instances will readily suggest themselves where damage might be

sustained to vines and plants, "on cultivated land," before they had reached the age of fruition, and adherence to the strictly legal definition of "crops" would probably bar compensation for such damage to the immature plants. The conditions which caused the enactment of the law would seem to warrant a liberal construction of its language.

The State, under severe penalties, protects deer. As a result of this policy, inaugurated some years ago, these animals have become numerous and the owners and occupants of cultivated land have suffered, and will continue to suffer, damage.

That fruit trees are frequently damaged and destroyed by deer, and that the so-called "legal fence" does not protect the orchards from incursions of these animals, are matters of common knowledge. The object and intent of chapter 108 was to compensate farmers for this damage which flows from the policy which the State has adopted, provided the damage is sustained to what grows "on cultivated land." I think it was the purpose of the state to protect the farmer from loss arising from the depredations of deer on his cultivated lands and that the language of the act may be fairly construed to effectuate that intent, whether the damage done is to the matured crops or to the plants, shrubs, vines, or trees, which produce crops. I therefore advise you that the claimant in this case is entitled, by virtue of the provisions of chapter 108, of the public acts of 1905, to compensation for such damage as he has actually sustained by reason of the destruction of his peach trees.

You further ask me to advise you in relation to the rule for determining such damage and whether or not you may consider the probable crops, and the value thereof, that the trees in coming years might have produced had they not been destroyed.

The claimant in this case is entitled to receive as compensation for his damages such sum of money as represents the difference between the value of the peach trees as they were before the deer attacked them and their value after the damage had been inflicted. In computing this sum you would not be warranted in speculating as to the value of the crops which might be produced in coming years had the trees been unmo-

lested. He is entitled to the actual loss which he has sustained, measured as stated above.

The act provides that it shall be the duty of the fish and game commissioner to "assist" the appraisers appointed by the selectman in determining the damage, and you ask me to advise you as to the meaning of the word "assist" in this connection. When the amount of damage exceeds twenty dollars, the fish and game commissioner becomes one of the appraisers, with powers equal to that of an appraiser appointed by the selectman. Such fish and game commissioner would, however, be acting as an official of the state, and his compensation for such service should be paid by the state, as though he were engaged in any other duty of his office.

A cursory reading of chapter 108, above quoted, reveals ambiguities which become emphasized as the act is more closely studied. In view of this, I think I ought to say to you that it is incumbent on the fish and game commissioner, as a state official, to be governed by the opinion of the attorney-general construing the act, and the same would be true of the comptroller of the state; but as the attorney-general has no power to advise town officials, the appraisers appointed by the selectman are not bound by such opinion, except so far as it may commend itself to them as a correct exposition of the law.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

IN RE THE USE OF VOTING MACHINES AT THE ELECTION FOR STATE OFFICERS IN 1906.

The amendment to the Constitution permitting the use of voting machines authorizes the General Assembly to confer on towns the power to use voting machines at all elections.

HARTFORD, September 17, 1906.

HON. THEODORE BODENWEIN, SECRETARY OF STATE.

Sir: — Some time ago a request for the construction of the law in relation to the use of voting machines at state elections

came to the office of the secretary of state, and was referred by you to this office. I gave no opinion in the matter, because, among other reasons, neither the secretary of state nor the attorney-general has the authority or power to determine whether a town has the legal right to use the voting machine at state elections. The determination as to the existence of that right does not rest with the secretary of state or the attorney-general, and neither would be authorized to interfere, in any way, with whatever action a town may see fit to take in that matter.

You ask for advice, however, as to your duty in relation to furnishing official envelopes for the state election to towns which may decide to conduct that election by means of voting machines. The provisions of the "secret ballot" law make it the duty of the secretary of state to furnish to the town clerk of each town, at least five days before the election, official envelopes, in number proportionate to the number of voters in such town. Whether you shall furnish envelopes to the town clerk of a town using the voting machine at the state election depends on whether a town, under the law, has, at such election, the legal right to use the voting machine, and, thus, the right to discard the present envelope and ballot system.

For the sole purpose, therefore, of advising as to your duty in the matter of furnishing envelopes to a town that may decide that it has the right to use the voting machine in place of the envelope system, at the coming state election, it becomes necessary to consider whether a town has that right. If it has that power, and sees fit to exercise it, the law would not compel you to furnish envelopes; and if it has not that power, then, although it undertakes to exercise it, you would not be relieved from the legal duty of furnishing envelopes.

That the town had not the inherent right to discard the secret ballot system of voting, and substitute for it the voting machine, until authorized and empowered to do so by the legislature, is a proposition that seems hardly debatable. The general assembly is vested with the power of making laws to regulate elections. The constitution of our state provides that the legislature shall have the power to make laws "to support

the privilege of free suffrage prescribing the manner of regulating and conducting meetings of the electors . . . . . ." This legislative power over the conduct of elections is supreme, except so far as it is limited by restrictions imposed by the state, or United States, constitution. In view of the many decisions of our supreme court it is well nigh axiomatic that our constitution is restraining rather than creative, and that the general assembly has the power to legislate on all subjects not prohibited by the state or federal constitution.

Article six, of the amendments to our constitution, contained one of these restrictions, in that it provided that "in all elections of officers of the state, or members of the general assembly, the votes of the electors shall be by ballot, either written or printed." This restriction on the power of the legislature to authorize an election of state officers to be conducted otherwise than by ballot was of full force and effect until October 1905, and up to that date the legislature was absolutely powerless to authorize towns to conduct state elections by means of the voting machine, — or in any manner other than by ballot. There has been no legislation since October 1905. It follows, therefore, as a certainty, that the towns have never received from the general assembly the right or power to elect state officers by the use of voting machines.

If, therefore, towns are vested with the power to use voting machines at the state election it must have been directly granted to them by the amendment to the constitution, adopted in October 1905, which reads as follows:

"Voting machines or other mechanical devices for voting may be used in all elections in this state, under such regulations as may be prescribed by law; provided, however, that the right of secret voting shall be preserved."

By this amendment the power is somewhere vested to determine that voting machines may be used at state elections. Before its adoption (October, 1905), the general assembly could make no law, as stated above, abolishing voting by ballot at state elections, and substituting therefor the voting machine. This amendment removes that restriction, and while it does not

ordain that voting machines exclusively shall be used at state elections, it provides that they "*may* be used in all elections." It lodges with some properly constituted authority the power to determine this choice between the ballot and the voting machine.

It must be remembered that prior to the adoption of this amendment (October 1905), the general assembly had the power to determine whether voting machines might or might not be used at elections, other than those for state officers and members of the general assembly; that is, it could authorize towns, cities, and boroughs, to use the voting machines at local elections. It also had the power, by virtue of the United States constitution, to direct that presidential electors and representatives in congress might be chosen otherwise than by ballot. This power to use voting machines at local elections it exercised in 1901 by enacting section 1731 of the general statutes which provides that any "town, city, or borough, may adopt . . . . . any kind of voting machine approved by the state board of voting machine commissioners, and thereafter such voting machine may be used at any or all elections held in such town, city, or borough, or in any part thereof, for voting, registering, and counting votes cast at elections, for town, city, or borough officers, but at no other elections."

This act was a clear recognition of the power of the general assembly to grant or withhold from towns the right to use voting machines, except at state elections. It is in perfect accord with the view that the general assembly is the depository of all power, relative to the manner of conducting elections, except so far as express constitutional limitations restrict that power. In my opinion, the effect of the amendment of October, 1905, was not to divide between the towns and the general assembly this constitutional power of determining how elections should be conducted; its purpose was not to vest in the towns the constitutional right to use the voting machine, regardless of authority from the general assembly. On the contrary it removed the restriction on the power of the general assembly, so that, as a result, this body is now able to enact a law, permitting towns, if they choose, to use voting machines

at state elections, exactly as the legislature has hitherto authorized them to use such machines at local elections.

If the contrary is true, that the amendment vests the towns with the constitutional right to use voting machines subject only to "regulation" at the hands of the general assembly, serious and perplexing difficulties might arise. The legislature, has, as stated above, pursuant to the United States constitution, the power to direct the manner in which representatives in congress and presidential electors may be elected. Clearly the determination of a town, without authority from the general assembly, to use the voting machine at all elections, could not control the manner of electing congressmen or presidential electors. They must be elected as the general assembly directs. The possible embarrassment from the existence of such divided constitutional powers over the control and conduct of elections is manifest. The general assembly has nowhere determined that representatives in congress shall be elected other than by ballot. It is true that in chapter 207 of the public acts of 1903 (an act providing regulations for using the voting machine), there are directions relative to the manner of voting for presidential electors by use of the voting machine, and it is possible, but by no means clear, that those directions could, by inference, be held to be a compliance with the mandate of the United States' constitution as to the duty of the legislature; but "representative in congress" is not mentioned in that chapter, and absolutely no directions exist on our statute books, as to his election, except those embodied in the secret ballot law. As representatives in congress are voted for at state elections the necessity for legislation in this respect is self-evident, before they can be elected by means of voting machines.

The amendment adopted in October, 1905, provides that voting machines may be used in all elections "under such regulations as may be prescribed by law." The question whether the phrase, "such regulations as may be prescribed by law," refers to regulations enacted in 1903, or to regulations to be enacted after the amendment became operative, is not, perhaps, free from doubt. The words "may be enacted"

might reasonably and with fairness be construed, under ordinary circumstances, to refer to regulations already existing as well as to those to be made in the future.

In 1903 (chapter 207) the legislature enacted regulations, minute in detail so far as they relate to the mechanical handling of the voting machine, and also in relation to the duties of election officials, etc. They do not, however, in the eleven pages of the session laws which they embody, mention state officers, or members of the general assembly; neither do they, as already suggested, mention representatives in congress. In short they merely provide how elections by means of voting machines shall be conducted. They provide the election machinery and regulations, but do not direct and determine what officers shall be elected by that machinery. The regulations so provided would apply to election of town, city, and borough officials, for whose election by means of voting machines authority has already been conferred by the legislature. To hold that the regulations enacted in 1903 refer to the election of state officers by the use of voting machines would make it necessary to hold that the general assembly was engaged in defining the method and details of doing an act two years before it had the power to cause the act itself to be done. And nowhere, in the law, is there authority to elect on voting machines other than local officers (section 1731), and possible inferential authority to elect presidential electors (chapter 207 of the acts of 1903).

If the power of determining whether voting machines shall be used in place of the ballot, at state elections, is not conferred directly on the towns by the amendment, but is conferred on the general assembly,— if that view is correct, then it is of no moment whether these regulations which appear in chapter 207 of the acts of 1903 are those referred to in the amendment, for this chapter confers on the towns no authority to use the voting machine at state elections; it could not, because the general assembly, at that time, neither possessed, nor attempted to exercise such power.

But whether the regulations enacted by the general assembly in 1903 are those which the amendment adopted in

October, 1905, refers to as "such regulations as may be prescribed by law" is not the controlling factor. The real question is this: Where did the towns get the right to use the voting machine at state elections? It is clear that such right is not inherent in the town; the legislature has not granted the right, because it could not; and in my opinion, the amendment adopted in 1905 does not vest this right in the towns, but does vest it in the general assembly, and thus enables the general assembly to enact laws authorizing the towns to use voting machines at state elections, exactly, as, in section 1731 of the general statutes, it authorized their use at town elections.

For these reasons I am of the opinion that no town has the right to use the voting machine at the coming election of state officers, members of the general assembly, and representatives in congress, and that until the general assembly authorizes the use of voting machines at state elections such elections can be legally held only in accordance with the provisions of the secret ballot law. I therefore advise you that it is the duty of the secretary of state to furnish envelopes pursuant to the provisions of chapter 45 of the acts of 1903, to the town clerk of every town, regardless of the fact that such town may determine to conduct the state election by the use of voting machines.

As stated above, the opinion of the attorney-general as to the right of the town to elect state officers by means of the voting machine, cannot, as a matter of law, control the action or decision of any town. This proposition I cannot too strongly emphasize. In the event that a town shall decide that it has the legal right to use voting machines at the state election, and carries that decision into effect, the question will arise as to the action of the secretary of state under the provisions of chapter 207 of the acts, which act provides that in all elections where the voting machine is used the secretary of state shall furnish:

(1) Blanks for written reports which shall certify as to the condition of the voting machines used at elections.

(2) Certain blanks for tally and return purposes.

(3) Additional instruction for canvassing, recording and

announcing the result for the guidance of the election officials.

These requirements are purely clerical. They do not affect the legal question as to the right to use the voting machine at a state election. Your performance of these acts, or your failure to perform them, would have no material bearing on that legal question. To furnish the blanks and instructions would facilitate the clerical work of the election, while a refusal to so furnish would merely impede that work. Under those circumstances, in the event that any town uses the voting machine at the election of state officers, I advise you to furnish such blanks, information, etc., as may be provided for in chapter 207 of the acts of 1903. On the town, or its officers, rests the whole responsibility for its action, and your rendering the clerical assistance referred to will in no way involve you in that responsibility.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

THE CORRUPT PRACTICES ACT.

The sworn election returns of justices of the peace should be filed with the town clerks of the respective towns in which justices were candidates.

HARTFORD, Nov. 8, 1906.

HON. THEODORE BODENWEIN, SECRETARY OF STATE,
Hartford, Conn.

Dear Sir: You submit to me the following inquiry:

"Should justices of the peace file in the office of the secretary of the state the sworn statement required by Section 7 of the corrupt practices act to be filed by all candidates for public office?"

Section 7 of chapter 280 of the public acts of 1905, known as the corrupt practices act, provides that every candidate for public office shall, within fifteen days after his election, file a

sworn statement of his election expenses, etc., with the secretary of the state, if a candidate " for any state, county, or probate office, state senator or representative "; but this statement must be filed with the town clerk of the town in which he resides, if he was a candidate for a " town office." If the office of justice of the peace is a " county office " within the meaning of this term as used in the act, the candidate is liable to the penalty provided, unless he files such sworn statement with the secretary of state; if, on the other hand, the term " town office," as used in the act, embraces the office of the justice of the peace, then such sworn statement must be filed with the town clerk of the town in which the candidate resides.

There can be no doubt that a justice of the peace is a county officer in that, within certain limitations, he may exercise jurisdiction coextensive with his county. In this sense he is commonly known as a county officer, is so referred to in the statutes, and our Supreme Court in Neth vs. Crofut, 30 Conn., page 581, holds that, to the extent above stated, at least, he is a county officer.

Article 10 of the amendments to our constitution uses this language: " The justices of the peace for the several towns in this state shall be appointed by the electors in such towns." Since the adoption of that amendment justices have been elected by the towns. Their election is declared by the presiding officer at the meeting in which they are elected. After election, a justice of the peace is a county officer in respect of exercising power throughout the county, but his election is purely a town matter, in that no elector outside of the town participates therein.

In construing an ambiguous term in the Corrupt Practices act it must be remember that the act is not concerned with the duties of the official after he has been elected; it is concerned purely with his nomination, candidacy, and election, together with the acts possibly attendant thereon.

The term " county office," as used in section 7, is thoroughly uncertain and ambiguous as to its meaning. It may mean an office vested with jurisdiction throughout the county, although the incumbent for the office could be voted for only by the electors of a town. If that is its meaning, then the term would include the office of justice of the peace. But on the

contrary, it may mean an office whose incumbent is voted for by the electors of a county, as that of sheriff, for instance; with that meaning, the term "county office" would not include the office of justice of the peace.

In the endeavor to decide on the meaning of this ambiguous term, "county office," the object of section 7 must be considered. Its manifest purpose was to cause the sworn statement to be filed with that official (either secretary or town clerk), with whom some law compels a list to be filed of those who had been candidates at the election, to the end that such list of candidates might be compared with the statements made, and the prosecuting officer be notified, fifteen days after election, of such candidates as had failed to comply with the law.

The secretary of the state has no list of those who were candidates for justice of the peace. Section 429 of the general statutes provides that, on or before January 15th, after a biennial election, the several town clerks shall transmit to the secretary of state a list of the justices of the peace that have qualified. Under section 418, a justice of the peace has until January 10th to decide whether or not he will qualify. The town clerk could not transmit the list of qualified justices until January 10th, at the earliest, and as this would be two months after the election the secretary of state manifestly could not act within the time limited by section 7. Moreover, the towns biennially elect approximately 1,200 justices of the peace, but of this number only about 800 qualify, and the names of the 400 who do not qualify are never transmitted to the secretary of the state; neither are the names of the defeated candidates ever transmitted.

Thus the secretary of the state has, at no time, a list of the candidates, and not until January 15th, weeks beyond the time when he must notify the prosecuting officer in relation to delinquent candidates, has he the partial list furnished him pursuant to section 419. It is, therefore, impossible for him to notify the prosecuting officers as required by the act in question.

On the other hand, the town clerk, on the day after election, has official knowledge as to who were the candidates for justices of the peace in his town.

Sections 1656 and 1657 of the general statutes provide, in substance, that the presiding officer of the electors' meeting shall receive, from the counters at the election, a certificate in duplicate setting forth, among other data, "the number of votes counted for each candidate and office, respectively, one of which certificates, on or before the following day, shall be deposited in the office of the town clerk." This is the only list of candidates as justices of the peace that is lodged with any official. The town clerk is, therefore, able to comply with the provisions of section 7, because he has an official list of such candidates.

As the meaning of the term "county office" used in section 7 is ambiguous, and susceptible of at least two interpretations, that one should be adopted which does not render impossible the enforcement of the law.

Therefore, although a justice of the peace is in the sense of jurisdiction a county officer, I advise you that as used in section 7 of the corrupt practice act the term "county office" does not include that of justice of the peace; and that the sworn statements of candidates for the office of justice of the peace should not be filed with the secretary of state, but with the respective town clerks.

You will observe that section 1662 of the general statutes makes it the duty of the presiding officer of an electors' meeting to furnish to the secretary of state, two days after the election, a list of the votes cast at such election for governor, lieutenant-governor, secretary, treasurer, comptroller, attorney-general, senator, judge of probate, sheriff, representative-at-large, representative in congress, and representatives chosen to the general assembly.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

FEES OF CLERKS OF THE SUPERIOR COURT.

The fees authorized by the recent Act of Congress in relation to naturalization belong to the state, by reason of the statute placing the clerks on a salary basis.

HARTFORD, December 5, 1906.

GEORGE A. CONANT, ESQ., Clerk of the Superior Court,

Hartford, Conn.

Dear Sir: — In response to your request for my opinion as to the duty of the clerk of the superior court in the matter of retaining, in addition to his salary, the fees authorized by the recent act of congress, regulating naturalization:

The act in question, approved June 29, 1906, provides that the clerks shall "charge, collect, and account for" fees, aggregating $5.00, to be paid by each applicant for naturalization. Of the fees so collected the clerk "is authorized to retain one half," accounting and paying over the remaining one half to the United States. All additional clerical services, entailed on the clerk's office by reason of the duties imposed by the act, are to be paid for by the clerk out of the fees retained by him. In no event shall the clerk be allowed to retain fees in excess of $3000, collected during one year, and, in case he collects as fees over $6000, all excess over $3000 shall be paid to the United States; but the clerk may receive, from the United States, when over $6000 is collected as fees during one year, such sum in addition to $3000 as the proper department of the United States government may decide is warranted, for the payment of additional clerical assistance.

Congress has thus enacted that clerks of courts, so far as they perform duties in naturalization proceedings, shall be paid by fees. The law of the State of Connecticut (chapter 268 of the acts of 1905, which has been substantially the law since 1899), provides that the clerks of the superior court shall be paid certain fixed salaries "in full for all services required by law of clerks of the . . . . superior court, and all fees payable by statute to said clerks shall belong to the state, and shall be so collected by them for its use."

Congress has power to establish a "uniform rule of naturalization," to make all laws "necessary and proper" to carry it into execution, and laws so enacted become the "supreme law of the land . . . . anything in the constitution or laws of any state to the contrary notwithstanding." (Articles First and Sixth of the United States Constitution.) Whatever may have been the earlier views in relation to this subject it is undoubted law, today, that congress may confer on a state court the power to naturalize, although the state which created the court has never vested it with such authority; and the officials of state courts, in exercising that power, are engaged in the performance of federal, and not state, functions. Levin vs. U. S. (decided in 1904), 128 Fed. Rep., 826, and cases there cited.

It must be conceded, therefore, that congress may enact that the clerk of a state court shall be paid by fees in naturalization proceedings, even though the statutes of such state provide that he shall be paid a salary in lieu of fees.

So the inquiry submitted by you resolves itself into this: Is the act of congress, which compensates the clerk, susceptible of a construction consistent with our state law placing the clerks on a salary basis? In other words, can they be so harmonized that our state statute may be enforced?

In my opinion it is not the intent of this act of congress to partially nullify the law of the state which provides that all fees coming to the clerk shall be paid to the state. There was no adequate reason for the enactment of a law to accomplish such an end. The purpose of the act was to enforce the "uniform rule of naturalization." This purpose could not be affected by the fact that the clerk of the court received fees instead of a salary. Indeed, every object of the law could be effectuated as well if the state received the fees, and the clerk a salary from the state. True, the act authorizes the clerk to retain one half the fees; but this may easily mean that he retains them as against the United States, not necessarily as against the state, which in creating the office of clerk provides that he shall be paid by salary in full for all services. The clerk collects all the fees, but accounts to the United States

government for only one-half thereof. The general government has no concern as to the other half of the fees, so long as the work is done, and sufficient clerical assistance provided. The clerk, although performing federal functions, is still acting as the clerk of a state court, and the state pays him "in full for all services required by law."

I therefore advise you that, in my opinion, while you retain the stated proportion of the fees, so far as your accounting with the United States is concerned, it is your duty, because of the existence of the state law placing you on a salary basis, to pay to the state one-half the fees which you so collect under the act of congress.

In this connection it may be noted that since the enactment of the clerks' salary bill the fees received from naturalization proceedings in the superior court have been paid to the state by the clerks; but as these fees were fixed by the law of the state, and the provisions of the present act of congress are widely different from those of the former act, in relation to naturalization, this may be of no legal moment.

The Act of congress apparently makes it the duty of the clerk to pay for additional clerical expense out of the fees retained. Whether the clerk pays for the assistance and the state receives the balance of the fees, or whether the state receives one-half the fees and itself pays the expense of additional assistance, is a matter of clerical detail. The former course is technically correct, but the latter is in keeping with the policy of the state as set forth in the clerks' salary act. I advise you that the latter course, if adopted by you; would comply with the law.

It is apparent that the act of congress places on the superior court greatly increased labor, by reason of the fact that courts of common pleas no longer have jurisdiction over naturalization, and because of the mass of clerical detail provided for in the act. In this condition of affairs the clerks of the superior court are entitled to a judicial determination as to their compensation under the act.

The comptroller will be advised in accordance with this opinion, and will demand that the fees in question be paid to the state in accordance therewith.

The clerks of the court are not bound by the opinion of the attorney-general, and, as suggested above, may properly ask to have this question determined by the courts, in which event the comptroller would undoubtedly unite with you in taking the question to the court for authoritative decision.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

SCHOOL SUPERVISION DISTRICTS.

Chapter 195 of the Public Acts of 1905, construed in relation to the continuance of a district formed under the provisions of that Act.

HARTFORD, Dec. 18, 1906.

HON. CHARLES D. HINE, SECRETARY STATE BOARD OF EDUCATION,
Hartford, Conn.

Sir: — In reply to yours of December 18th reading as follows:

"The state board of education must inform certain supervision districts whether it will, under section 3, chapter 195, of the public acts of 1903, draw orders on the treasurer of the state for supervision grants.

"Accordingly, referring to section 2 of said act, this board must consider

"1 Whether it is under legal obligation to take notice of the increment in teachers, in case the number exceeds fifty.

"2 Whether official notice that there are more than fifty teachers in a supervision district, determines the district.

"3 If '2' be answered in the negative, whether a district, which does not dissolve at the end of three years, as permitted by section 2, may continue, without regard to the number of teachers it contains, so long as it maintains, without interruption, its primary organization.

"The above questions are imminent and especially important to the districts concerned.

"Very truly yours,
"CHARLES D. HINE,
"*Secretary.*"

I quote so much of section 2 of chapter 195 of the public acts of 1903 as is material:

"Two or more towns together employing not less than twenty-five nor more than fifty teachers may unite, by vote of the town school committee, board of school visitors, or board of education, as the case may be, for the purpose of employing a superintendent of schools, and towns so united shall form a supervision district. Every district organized under the provisions of this section shall continue three years, and at the end of three years any town may dissolve a district by withdrawal. Notice of the intent to withdraw shall be given in writing to the other towns of the district at least three months before the termination of the three year period."

I advise you that, if the towns legally united for the purpose mentioned in section 2, such union will continue for three years, even though, during said three years, the number of teachers employed by said towns exceed fifty.

This opinion is, of course, based on the assumption that at the date of said union of the towns the number of teachers employed exceeded twenty-five and was not more than fifty. I further advise you that such union of towns is not determined at the end of three years, unless one of the towns takes action, as prescribed in section 2 of the act.

It seems to me that the attention of the general assembly should be called to the provisions of this act with a view to protecting the state's interests in the matter of granting funds to towns which have so united. As the law now stands the state would continue paying money as provided by the act, even though the number of teachers varied largely from that which permits the establishment of the supervision district.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

HARTFORD, January 8, 1907.

HON. THERON UPSON,
Insurance Commissioner,
Hartford, Conn.

Dear Sir: — In reply to your inquiry reading as follows:

The Hartford Life Insurance Company in its public advertisement states that its assets amount to $3,577,928.52. These figures are made up from the assets of the stock department, $2,044,061.10, and from those of the Safety Fund Department, $1,533,867.42. Of this latter amount, $1,152,975.30 constitute a Fund held by the Security Company of Hartford as trustee to protect contracts in the Safety Fund Department.

Please inform me if in your opinion the advertisement referred to is in compliance with the provisions of Section 3617 of the General Statutes. Respectfully yours,

THERON UPSON,
Commissioner.

I quote section 3,617 of the General Statutes:

"No insurance company, corporation, or association, authorized to transact business in this state, nor any agent thereof, shall state or represent, either by advertisement in any newspaper, magazine, or periodical, or by any sign, circular, card, policy of insurance, certificate of renewal thereof, or otherwise, any funds or assets to be in its possession, not actually possessed by it, and available for the payment of losses and claims, and held for the protection of its policy-holders or creditors. The advertising of subscribed capital not actually paid up in cash shall constitute a violation of the provisions of this section."

In the case entitled Security Co. vs. Hartford, 61 Conn., 89, some phases of this question were before the Supreme Court. The court there held that what is known as the Safety Fund is the property of the insurance company. The court uses this language:

"Another of these agreements is, that it will use a specified part of the money paid by the member to create a safety fund; and whatever right, interest, claim, or demand the member has in or upon this fund, when created, he has solely by virtue of his contract with the owner of the fund.

"Giving to the language of the certificate its ordinary meaning, we are unable to see why the money received by the company from the members does not all and equally become, when paid over, the money and property of the insurance company. The ten dollar payments are received to create a safety fund, and the money from the mortuary calls is received to form a mortuary fund, but both funds are to be formed by the company and managed by the company in such way and manner as it shall deem best, except so far as it may bind itself by contract to do otherwise. In the case of both funds it has undoubtedly by its contracts subjected the funds to certain claims, rights, and trusts

in favor of the members, but these do not change the ownership and dominion of the insurance company over the funds. So far as the safety fund is concerned it is expressly stipulated in the trust contract, with this stipulation, is made a part of every certificate, and is printed therein in full. Thus the trustee and every member expressly agrees that the safety fund belongs to the insurance company; and indeed we think all the important provisions in both contracts seem to be based on the assumption that the insurance company is the owner of this safety fund.

"In short after fully considering both contracts, we are unable to resist the conclusion that the property of this safety fund is the property of the insurance company subject to all the claims, rights, and interests of others acquired therein by virtue of contracts made with the insurance company, its owner. We hold, therefore, that the property constituting the safety fund belongs to the insurance company as *cestui que* trust, and not to the certificate holders."

The case above quoted arose out of a question of taxation, but the court by its language definitely determines the ownership of the fund to be in the insurance company. I am therefore, because of that decision, obliged to say to you that this fund is owned by the insurance company and becomes a portion of its assets.

It is true that the fund is stamped with trusts in favor of the certificate holders in the safety fund department, and that under certain contingencies such certificate holders would undoubtedly be entitled to the benefits of the fund in preference to other claimants against the insurance company. Viewed in this light it is evident that the advertised assets are not applicable to the payment of the claims of all the policy holders or creditors of the insurance company in equal degree; and that the trust stamps on the fund certain contingent benefits to the certificate holders in the safety fund department in preference to other policy holders or creditors. Section 3,617, however, does not provide that the advertisement shall state the preferences which may exist against the assets in favor of any class of policy holders. The statute is penal, and must, of necessity, be construed strictly. In my opinion the statute has not been violated if the actual assets "available for the payment of losses and claims, held for the protection of its policy holders or creditors," are advertised, although such advertisement does not show that some of these assets are first applicable to certain classes of policies.

I understand from you that this advertisement has appeared

in substantially the same form for several years, and has included this fund as assets without stating in the advertisement that trusts existed in favor of a certain class of policy holders.

If the best interests and policy of the state demand that the advertisement of the assets of an insurance company shall show, not only the assets, but the extent to which those assets are applicable to certain classes of policies in preference to other classes of policies in the company, it is a matter for the general assembly to consider. I advise you that the provisions of section 3,617 of the general statutes, as they now appear, do not go to that extent.

In this opinion it is not necessary, and I do not attempt, to pass on the extent of the rights of any certificate holder in or to the safety fund accumulation, nor on the duties of the insurance company to such certificate holder, in relation to such fund. The conclusion that the assets of the insurance company include the safety fund accumulation is based entirely on the decision of our court that such fund is the property of the company; and this opinion is limited solely to advising you, in response to your inquiry, that the advertisement in question does not violate the provisions of section 3,617 of the general statutes.

I am very respectfully,
WILLIAM A. KING,
Attorney-General.

IN RE THE INHERITANCE TAX.

[NOTE. In 1904, some hundreds of actions, known as the "Atwood suits," were brought against executors and administrators of estates, to recover the forfeitures which the law, at that time, permitted to be recovered from executors, etc., who had failed to file inventories of the property of the estates. The General Assembly of 1905 enacted legislation protecting the defendants from Atwood's demands; but at the hearing before the committee which considered this legislation, it was claimed that a large amount of property, subject to the inheritance tax, was concealed in the estates involved in the Atwood suits. The attorney-general thereupon investigated the estates and submitted to the treasurer the following report of the investigation.]

HARTFORD, May 16, 1905.

HON. JAMES F. WALSH,

Treasurer.

SIR:

I have caused an investigation to be made of the estates which are the subject-matter of the so-called "Atwood suits," to determine whether any inheritance tax has been withheld from the state by the executors and administrators of those estates.

In determining whether an estate is subject to the inheritance tax, the law in force at the date of the decedent's death is of controlling importance.

The inheritance tax law was enacted in 1889, and took effect August 1st of that year; it was modified by an act which became in force July 1, 1893; and radically changed, being supplanted by substantially our present law, June 1, 1897. The estates affected have accordingly been tabulated on that basis, and are grouped in probate districts.

I

ESTATES INVOLVED IN THE ATWOOD SUITS, WHERE DECEDENT'S DEATH OCCURRED ON OR AFTER JUNE 1, 1897,— NOT SUBJECT TO AN INHERITANCE TAX.

The law regulating the taxation of these estates made taxable all that portion of the estate which, after the payment of debts and expenses of settlement, exceeded $10,000 in value,— by whomsoever inherited.

NORWALK

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Harriet F. Bennett	Mar. 4, 1899	$2,050.00	" "
Belle Roberts	April 30, 1901	637.09	" "
George F. Carr	Jan. 13, 1898	No property but an interest in a blacksmith business	" "
Otto C. Johnson	June 26, 1897	100.00	" "
Lovinda Smith	June 17, 1899	No estate	

LITCHFIELD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Edgar V. Dougherty	April 14, 1903	$191.55	" "
Ann Jane Bailey	Oct. 20, 1902	1,000.00	" "
John M. Galvin	Oct. 4, 1898	1,000.00	" "
Harriett F. Thompson	Oct. 6, 1903	589.06	" "
Sarah A. Guild	Oct. 1, 1903	2,976.49	" "
Maria Birkinshaw	June 20, 1902	375.00	" "
Louise Kenney	Mar. 4, 1899	55.00	" "
Cora Kuntz	Sept. 11, 1903	306.00	" "
Felix Quigley	Sept. 11, 1897	7,025.00	" "
Henry L. Kenney	Mar. 24, 1902	2,000.00	" "
Michael O'Grady	Nov. 12, 1898	928.00	" "
Mary J. Goodman	May 8, 1902	363.52	" "
Robert Stevens	April 9, 1900	5,069.42	" "
Sarah M. Ingersoll	April 25, 1900	4,100.00	" "
Statira D. Johnson	April 18, 1903	699.51	" "
Willis Carter	April 22, 1902	Nothing	" "
Sarah A. Perkins	Sept. 8, 1902	1,367.41	" "
Louisa Weeks	Nov. 29, 1901	300.00	" "
Samuel H. Dudley	Sept. 5, 1903	2,010.00	" "
Jane M. Benedict	April 11, 1902	177.93	" "
Buell Carter	June 29, 1900	4,900.00	" "
Selina B. Wetmore	Mar. 2, 1902	813.14	" "
Mary Cordelia Catlin	Nov. 13, 1901	2,262.97	" "
Charlotte Crossman	Oct. 31, 1898	1,000.00	" "

STAMFORD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Eugene C. N. Sutton	May 9, 1900	$325.22	" "
Anna M. Close	Oct. 29, 1901	9,489.03	" "
Emma C. Nash	Sept. 23, 1899	6,819.50	" "
Seth S. Dann	Jan. 25, 1902	3,608.04	" "
Fannie B. Slater	Sept. 11, 1902	7,366.40	" "
Mary Ella Brown	Nov. 6, 1902	Nothing	" "
Emma F. Giles	Aug. 5, 1903	11,000.00	" "

WESTPORT

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Mary Williams	Jan. 3, 1900	$2,350.00	" "
Byron A. Williams	Nov. 26, 1902	9,900.00	" "

DANBURY

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Catherine F. Lynch	Jan. 31, 1902	$1,000.00	" "
Ira Miller	Jan. 8, 1903	1,600.00	" "
William A. Daniels	Dec. 23, 1897	Nothing	" "
Michael Coyle	Nov. 22, 1900	(Pension check, $36)	" "
Bridget E. Young	June 19, 1901	Nothing	" "
James S. Taylor	June 2, 1902	853.90	" "
Michael Fitzgibbons	April 9, 1903	729.75	" "
Hannah M. Treadwell	May 25, 1898	466.81	" "
Ann Kane	Feb. 11, 1903	Nothing	" "
William J. Small	Oct. 1, 1900	Nothing	" "
Mary Smith	Jan. 5, 1900	(Small deposit in savings bank)	" "

FAIRFIELD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Bettie A. Knapp	Oct. 15, 1900	Small estate	" "
Amelia B. Torrey	Dec. 3, 1900	$92.70	" "
Jonathan Banks	Oct. 12, 1901	3,983.39	" "
David S. Brown	Nov. 11, 1899	4,455.00	" "
Madison Wakeman	Jan. 17, 1898	Small estate	" "
Charles Lacey	Dec. 21, 1897	3,510.00	" "
Jane Sturgess	May 20, 1899	10,451.00	" "
Mary J. Warren	July 11, 1903	1,039.04	" "
Ann Watson	Feb. 28, 1903	2,728.29	" "

BETHEL

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Alice A. Flint	Mar. 13, 1901	$500.00	" "
Hannah K. Peck	Mar. 28, 1903	2,906.93	" "
Esther Bartram	May 10, 1899	2,000.00	" "
Maryette Mead	April 19, 1899	2,000.00	" "
Anna Keinke	Aug. 6, 1900	(Small insurance policy)	" "

NEW MILFORD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Alzora Stone Wilson	Mar. 20, 1902	$8,000.00	" "
Eliza Bristol	Nov. 1, 1901	Nothing	" "
Annie E. Buck	Feb. 16, 1903	1,000.00	" "
Mary B. Hartwell	Mar. 2, 1901	5,000.00	" "
Helen M. Giddings	Aug. 19, 1902	Unascertained	
Ann J. Keeler	June 6, 1900	"	
Asya C. Morris	Mar. 7, 1903	"	
Henrietta Noble	May 12, 1902	5,000.00	" "

GREENWICH

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Sarah Ann Dobson	Jan. 5, 1901	$700.00	" "

KILLINGLY

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Abigail Aldrich	June 28, 1903	$2,000.00	" "
Lucy B. Judson	Oct. 25, 1897	986.40	" "
William M. Young	Aug. 21, 1897	Nothing	" "

PLAINFIELD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
James Monahan	July 29, 1897	Small estate	" "

GUILFORD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Melzar F. Bartlett	Nov. 6, 1900	$1,000.00	" "
Mary C. Smith	May 13, 1903	276.67	" "
Peter Snyder	Oct. 9, 1899	212.00	" "
Russell Potter	Sept. 30, 1903	1,750.00	" "
Robert E. Dawson	Dec. 3, 1902	550.00	" "
Eliza A. Weed	May 14, 1900	1,958.34	" "

GROTON

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Cynthia W. Benjamin	May 25, 1903	$950.00	" "

WINDHAM

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Albert S. Turner	Oct. 5, 1901	Insolvent	" "
Louisa A. Raynes	Feb. 19, 1900	$7,145.10	" "
Anna Webster	Mar. 21, 1902	3,000.00	" "

BRANFORD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Ann McKenna	July 21, 1899	$2,000.00	" "
Phil A. Palmer	Sept. 3, 1902	182.53	" "
Michael P. McCarthy	Oct. 4, 1900	1,000.00	" "

ENFIELD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Annie M. Prickett	April 4, 1899	$2,702.00	" "
Fanny R. Finch	Oct. 8, 1898	Nothing	" "
Emily E. Parsons	July 19, 1902	250.00	" "

DERBY

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Susan C. Bradley	July 24, 1899	.....	" "
Mary Ann Riggs	Aug. 10, 1900	.....	" "
Louise Cook	April 23, 1898	.....	" "
John Lounsbury	Oct. 8, 1900	.....	" "
Lucinda Lounsbury	Oct. 8, 1900	.....	" "
Sarah M. Nelson	Mar. 28, 1900	.....	" "
Mary Dockray	April 14, 1898	.....	" "
Alice Fielding	Feb. 15, 1901	.....	" "
Bridget Marion	June 13, 1899	.....	" "
Eliza J. B. Carrington	Jan. 20, 1900	.....	" "
Jennie M. Baldwin	Feb. 24, 1898	.....	" "
Martha E. McEnnery	Feb. 24, 1898	.....	" "

The Judge of Probate for the District of Derby reports on these estates as follows:

"I hereby certify that in no case did the inventory in the foregoing estates exceed the sum of $10,000."

Attest:

EARL S. EDGERTON,

Judge of Probate.

WATERBURY

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Norman W. Caswell	Aug. 31, 1898	Nothing	" "
George R. Hollis	May 26, 1902	Nothing	" "
Margaret Kearney	July 25, 1899	$698.99	" "
Alice Louise Stevens	Dec. 26, 1898	Nothing	" "
August Johnson	Sept. 24, 1901	Nothing	" "

WATERBURY — CONTINUED.

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Elizabeth Casey	July 15, 1899	500.00	" "
Lena B. Fanning	July 27, 1899	Nothing	" "
Bridget Foley	Sept. 15, 1898	Nothing	" "
Mary Lahey	Mar. 8, 1898	Nothing	" "
Mary Kelley	Sept. 22, 1898	300.00	" "
Otto Ochsner	Sept. 18, 1901	560.00	" "
Mary Sullivan	Jan. 12, 1900	356.75	" "
Frederick Reiser	Oct. 19, 1900	500.00	" "
Nellie F. Shanahan	Aug. 14, 1901	1,740.00	" "

HARTFORD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Mary H. Lindsay	April 24, 1902	Nothing	" "
Edward J. Cleaveland	July 14, 1902	$13,500.00	" "
Isabella B. Quinn	April 8, 1901	1,400.00	" "
Frank T. Swift	Jan. 29, 1903	4,057.75	" "
Bertha M. Waters	Oct. 6, 1902	1,000.00	" "
Daniel P. Cook	Feb. 2, 1901	Nothing	" "
Julia E. Williams	Dec. 4, 1902	9,509.31	" "

MILFORD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Mary N. Clark	Oct. 21, 1902	$2,535.00	" "

STRATFORD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Phoebe Coe	May 3, 1901	$1,000.00	" "

NORWICH

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Sarah L. Finn	June 24, 1901	$2,200.00	" "
J. Austin Cole	July 14, 1902	4,250.00	" "
Henry T. Champlin	Dec. 9, 1902	418.65	" "
George S. Sullivan	Oct. 25, 1901	1,084.50	" "
Amelia D. Smith	Feb. 4, 1898	200.00	" "
Louis Levitski	April 11, 1900	500.00	" "

LEDYARD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Mary Ann Fanning	Oct. 25, 1901	$1,000.00	" "
John N. Gallup	Dec. 18, 1901	2,047.94	" "

PUTNAM

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Samantha M. Moore	June 26, 1901	Nothing	" "

WALLINGFORD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Jane Hall	Feb. 21, 1903	$870.90	" "
Wolcott Hall	Feb. 21, 1903	512.00	" "

NEW BRITAIN

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Martha A. Judd	June 5, 1901	Nothing	" "
Esther L. Kempshall	Sept. 4, 1899	Nothing	" "
John Staub	Mar. 6, 1900	(Bond $700)	" "
Ellen R. Camp	Mar. 31, 1900	$1,224.58	" "
Judson C. Dickenson	Sept. 6, 1897	3,103.19	" "
John C. Koverman	Nov. 2, 1899	500.00	" "
Delia Malone	Dec. 28, 1897	366.67	" "
Mary E. Stevens	June 30, 1900	776.30	" "

EAST WINDSOR

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Catherine J. Parsons	June 22, 1903	$3,500.00	" "

MIDDLETOWN

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Harriett A. Pitt	Nov. 7, 1899	$7,500.00	" "
John B. Gunn	Jan. 23, 1899	Nothing	" "
James E. Roberts	April 9, 1900	4,767.95	" "
Amelia C. Kent	April 3, 1898	9,839.04	" "

SALISBURY

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Mary M. Barnum	Feb. 15, 1902	(Less than $10,000.00)	" "
Lucy Ann Richardson	July 1, 1899	(Less than $10,000.00)	" "

CANAAN

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
Ellen E. Dean	June 23, 1903	$2,319.28	" "
Edward Burns	Oct. 3, 1901	5,571.14	" "
Ann E. Pierce	Nov. 29, 1902	5,381.02	" "
Charles H. Richmond	Aug. 26, 1902	3,000.00	" "
Polly S. Beebe	May 20, 1901	3,763.10	" "

WATERTOWN

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 201, Acts of 1897 (less than $10,000 after the Payment of Debts and Expenses)
John A. Buckingham	Oct. 26, 1899	$100.00	" "

WINCHESTER

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. (less than $10,000 after the Payment of Debts and Expenses)
Imogene Yale	Sept. 28, 1902	$187.68	" "

TORRINGTON

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. (less than $10.000 after the Payment of Debts and Expenses)
Harriet Truman	Mar. 21, 1898	$1,000.00	" "
Marie Smith	June 17, 1899	Nothing	" "
Amelia Fritz	Oct. 17, 1901	150.00	" "

II

ESTATES INVOLVED IN THE ATWOOD SUITS WHERE THE DECEDENTS DIED ON OR AFTER AUGUST 1, 1889, AND BEFORE JUNE 1, 1897, WHICH ARE NOT SUBJECT TO AN INHERITANCE TAX.

The law regulating the taxation of these estates absolutely exempted all property passing to the " father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of

any adopted child, the wife or widow of a son, the husband of the daughter of a decedent, or some charitable purpose, or purpose strictly public within this state."

All property in excess of $1,000 passing to other than the above exempted parties was subject to the tax on such excess.

The amendment adopted July 1, 1893, added brothers and sisters to the exempted classes, and affected all estates in process of settlement on July 1, 1893.

NORWALK

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Catherine A. Ambler	May 25, 1897	$812.02	" "
Catherine Valentine	Sept. 5, 1895	No estate	" "
Benjamin F. Brown	July 12, 1894	41,183.18	" "
Louise L. Gregory	May 29, 1897	1,219.50	" "
Clark H. Osborn	Jan. 17, 1895	487.59	" "
Enoch H. Gilbert	June 18, 1896	165.09	" "
Eva M. Olmstead	Oct. 29, 1895	1,600.00	" "
Louise Richards	Mar. 11, 1895	325.00	" "
Carrie A. D. Winchester	May 18, 1895	.....	" "
Charles Miller	Jan. 31, 1895	.....	" "
Magdelena Zoellinger	Nov. 27, 1895	115.00	" "
Jennie Blake	Dec. 27, 1902	500.00	" "
Lucy N. Benedict	April 3, 1894	5,605.23	" "

DANBURY

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
John Muenburg	Sept. 8, 1890	$495.30	" "
Henry Hagaman	April 6, 1802	Nothing	" "
Emiline Schrimer	April 18, 1897	"	" "
James Ryder	Feb. 17, 1897	"	" "
Matthais Heinzelman	Sept. 5, 1894	.....	" "

BETHEL

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Mary A. Ferry	April 1, 1897	$2,000.00	" "

RIDGEFIELD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Sherman Smith	Feb. 14, 1895	Nothing	" "

KILLINGLY

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Jane H. Robinson	Nov. 15, 1892	$4,000.00	" "
Samuel W. Butler	Mar. 27, 1897	135.00	" "
Harriet Johnson	Sept. 12, 1892	500.00	" "
Lucy A. Logee	Mar. 25, 1897	800.00	" "

PLAINFIELD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Dancy G. Tiffany	April 7, 1896	$17,573.10	" "
Amelia Burke	June 1, 1895	Small	" "
Sarah L. Gallup	June 25, 1896	"	" "
Susan E. Phillips	May 23, 1906	2,100.00	" "
Joseph Vaughn	Aug. 13, 1896	4,500.00	" "
Julia H. Pierce	Oct. 26, 1895	Small	" "

NEW LONDON

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Elizabeth W. Benjamin	May 15, 1891	$2,500.00	" "
Charles Wright	June 25, 1899	Small deposit in s'v'gs bk.	" "
			" "
George B. Whittlesey	May 3, 1895	17,650.00	" "

GROTON

Estate of	Date of Appointment	Amount of Estate
Edgar Daboll	June 26, 1890	Unascertained.

This is represented as a small estate, inherited by sisters of the deceased. Under the law in force in 1890, any amount in excess of $1,000 inherited by a sister would be taxable.

WINDHAM

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Sarah Blish	Aug. 16, 1894	$5,000.00	" "
Clara A. Hatch	May 13, 1890	1,000.00	" "

ENFIELD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
John Sheldon	Dec. 29, 1896	$12,000.00	" "

HARTFORD

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Carrie S. Burnham	April 3, 1897	$2,856.25	" "
Emma Hauser	Mar. 25, 1897	Small est.	" "
Justin J. Gates	April 8, 1896	2,680.00	" "

STONINGTON

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Moses Pendleton	April 29, 1891	$12,000.00	" "
Ellen Phelps Edwards	April 14, 1897	10,000.00	" "

NORWICH

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
John Coffee	May 14, 1891	$318.00	" "

PUTNAM

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Charles Labossiere	Aug. 13, 1892	(Bond of $1,000.00)	" "
Susan Foster	Oct. 17, 1896	400.00	" "
Julia A. Hopkins	Mar. 11, 1893	2,100.00	" "
Ellen S. Spaulding	Oct. 31, 1892	506.67	" "
Sarah R. Spaulding	Oct. 2, 1895	542.27	" "

THOMPSON

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Lydia A. Hawkins	Jan 25, 1896	$30,000.00	" "

NEW HAVEN

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Emma R. Simons	May 8, 1897	Nothing	" "

SALISBURY

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
George B. Clark	Oct. 8, 1895	.....	" "

CANAAN

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Hattie A. Fuller	Jan. 21, 1897	$5,738.64	" "
Uriel H. Miner	June 18, 1896	.....	" "
Frank A. Peet	Nov. 27, 1896	.....	" "

WATERTOWN

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Julia E. Lockwood	June 18, 1896	$3,607.07	" "

ELLINGTON

Estate of	Date of Appointment	Amount of Estate	Exempt under Ch. 180, Acts of 1889, and Ch. 257, Acts of 1893
Orra P. Hammond	Jan. 21, 1891	.....	" "
Margaret Kivole	Jan. 5, 1895	$200.00	" "
Bridget Breen	May 15, 1895	350.00	" "
W. Winston Doane	Oct. 8, 1890	.....	" "

III

ESTATES INVOLVED IN THE ATWOOD SUITS WHICH WERE SUBJECT TO AN INHERITANCE TAX, AND IN WHICH THE TAX HAS BEEN PAID TO THE STATE.

Under this head are grouped five estates. The details in relation to the inheritance tax are stated in connection with each case.

The Atwood suits are against administrators and executors who, it is alleged, did not file an inventory within the time fixed by law, with the court of probate. The inheritance tax is based on a copy of that inventory and appraisal filed with the state treasurer by the court of probate. In some of the following cases an inventory and appraisal was filed with the state treasurer, although perhaps not filed, or filed beyond the time limit, with the court of probate.

HARTFORD

Estate of	Date of Appointment	Amount of Estate
Elizabeth R. Rexford	July 3, 1902	$15,937.31

Tax, $145.73, paid Jan. 9, 1903.

NORWALK

Estate of	Date of Appointment	Amount of Estate
Lavina Purves	Feb. 16, 1900	$18,593.40

Inventory filed with the state treasurer, June 1, 1902.

Tax, $131.93, paid April 28, 1904.

THOMPSON

Estate of	Date of Appointment	Amount of Estate
Jeremiah Olney	June 2, 1903	$226,799.79

Inventory filed with state treasurer, August 3, 1903.

Tax, $756.23, paid June 22, 1904.

ELLINGTON

Estate of	Date of Appointment	Amount of Estate
George Maxwell	April 15, 1891	.....

This estate was subject to the law of 1899, under which all property in herited by a wife, child, lineal descendant, etc., was exempt from taxation.

A portion of the estate was inherited by others than the exempt classes, and on this portion a tax of $600, with $18 accrued interest, was paid the state, September 2, 1892.

MILFORD

Estate of	Date of Appointment	Amount of Estate
Henry A. Taylor	May 13, 1899	$490,492.82

Inventory filed with the state treasurer, July 25, 1904.

Tax, $957.23, paid December 31, 1904.

This estate was so involved in litigation that, as appears from a petition to the court, dated July 18, 1902, the court was asked to extend the time for filing the inventory, on the ground that the executors were not in possession of sufficient knowledge of the estate to file a correct inventory. The application for extension was granted.

IV

ESTATES STILL UNSETTLED, INVOLVED IN THE ATWOOD SUITS, SUBJECT TO AN INHERITANCE TAX, ON WHICH THE TAX HAS NOT BEEN PAID.

In the following five estates a tax is due the state:

Section 2375 of the General Statutes provides as follows:

" No final settlement of the account of any executor or administrator shall be accepted or allowed by any court of probate unless it shall show, and the judge of said court shall find, that all taxes, imposed by the provisions of § 2368 upon any property or interest belonging to the estate to be settled by said account, shall have been paid, and the receipt of the treasurer of the state for such tax shall be the proper voucher for such payment."

There is no occasion for action on the part of the State to collect the taxes from these five estates. The courts of probate enforce Section 2375, together with the payment of the accrued interest at 9 per cent., as provided in Sections 2368 and 2370.

FAIRFIELD

Estate of	Date of Appointment	Amount of Estate
Juliett Jelliff	Aug. 21, 1899	$12,700.00
Eliza H. Meeker	Nov. 9, 1901	20,381.63

In the Jelliff estate, after deducting the $10,000 exemption, there remains, apparently, $2,700 subject to an inheritance tax of one-half of one per cent.—$13.50. The estate is still unsettled, and is, I understand, in litigation.

In the Meeker estate there would seem to be about $10,000 subject to the tax. The estate is in process of settlement.

STAMFORD

Estate of	Date of Appointment	Amount of Estate
Frances M. Smith	Jan. 19, 1903	$12,627.41

The estate is in process of settlement. The judge of probate states that after deduction of exemption ($10,000), debts, and expenses, there will be about $1,000 subject to the inheritance tax of three per cent., or $30.

GUILFORD

Estate of	Date of Appointment	Amount of Estate
John Beattie	Dec. 12, 1899	$64,397.61

Inventory filed with the state treasurer, May 1, 1900, showing the amount above stated.

The estate is involved in litigation, on the result of which the amount subject to the tax depends. The estate is still unsettled, and cannot be settled until the litigation is ended. Claims amounting to $35,036.86 have been presented against it. The judge of probate estimates that $20,000 will be subject to the tax, but this depends largely on legal contingencies.

LITCHFIELD

Estate of	Date of Appointment	Amount of Estate
Margaret Craney Sanford	Jan. 14, 1903	$14,250.00

Inventory filed with the state treasurer, September 27, 1904. Amount of tax due, $21.25. Ordered paid by the court of probate. Estate still unsettled.

V

ESTATES OF PERSONS DYING BEFORE AN INHERITANCE TAX WAS IN FORCE.

In the following estates, as the decedents died before the inheritance tax law was enacted (August 1, 1889), no tax was due the state.

STONINGTON

Estate of	Date of Appointment	Amount of Estate
Ellen F. Coates	Aug. 6, 1888	$2,000.00

WINDHAM

Estate of	Date of Appointment	Amount of Estate
Miles Potter	Dec. 30, 1887	.....

NORWALK

Estate of	Date of Appointment	Amount of Estate
Nathan Comstock (Died in 1872)	Oct. 5, 1897	$3,500.00

NORWICH

Estate of	Date of Appointment	Amount of Estate
James O. Kelley	Sept. 27, 1888	.....

BETHEL

Estate of	Date of Appointment	Amount of Estate
Charles A. N. B. Schmidt (Died in 1883)	Oct. 18, 1899	.....

GROTON

Estate of	Date of Appointment	Amount of Estate
William E. Wheeler	May 15, 1889	.....

SUMMARY

Whole number of Estates	237
Estates exempt from tax	223
Estates in which tax has been paid	5
Estates undetermined as to amount (three in District of New Milford, one in Groton),*	4
Estates unsettled, liable to tax	5

* From the information that I have, these four estates are too small to be subject to the tax; but the information is not definite.

The estates included herein comprise the subject-matter of the 237 suits which the clerk of the court informs me are now pending in court. I understand that many other estates were involved in suits brought by Mr. Atwood and subsequently withdrawn. Of these I have no record, and they are not included.

From the reasons publicly assigned for the withdrawal of those actions it is clear that the estates involved were too small in amount to make them subject to any inheritance tax.

This report is based on facts and information furnished by the judges of probate in their respective districts, except in a few cases, where the information was furnished by individuals.

All the reports of the judges of probate and others, containing the information embodied herein, are on file in this office.

I suggest for your consideration the desirability of sending a copy of this report to each of the judges of probate, to the end that if there are errors herein, affecting the state's interest, they may be corrected.

I am very respectfully,

WILLIAM A. KING,

Attorney-General.

STATEMENT OF COST OF ASSISTANCE AND PERSONAL EXPENSES AS PER VOUCHERS RENDERED TO AND ON FILE WITH THE COMPTROLLER.

SERVICES RENDERED IN 1904.

Pd. in 1905.			
Jan. 12,	Services (1904) at Washington, naturalization matters, . .	A. Chamberlain,	$100 00
June 9,	Services (1904) Ferris estate, .	Kenealy & Keating	150 00
Sept. 14,	Services (1904) at Washington collecting $37,000 of Spanish War Claims, ...	Andrew F. Gates,	802 00
	Total services rendered in 1904; paid for in 1905, . . .		$1,052 00

RENDERED IN 1905 AND 1906.

Pd. in 1905.			
May 27,	Services inheritance tax matters,	W. F. Fay,	5 00
June 21,	Services in State vs. Norwich, .	A. L. Storey,	10 00
July 5,	Services and expenses in foreclosure case, ...	G. E. Hinman,	21 00
July 21,	Services Supreme Court, . .	W. H. Harriman,	50 00
Sept. 13,	Services in State vs. Connecticut Loan and Realty Company, .	N. E. Pierce,	175 00
Nov. 1,	Services (two weeks), . . .	M. Kenealy,	150 00
Nov. 23,	Services and expenses at Washington in Spanish War Claims,	E. M. Day,	106 50
Pd. in 1906.			
Jan. 4,	Services in Supreme Court in McGovern vs. Mitchell *et al.*,	H. S. Stoddard,	350 00
Jan. 18,	Services, ...	Gross, Hyde & Shipman,	200 00
Feb. 15,	Services in State vs. Savings Bank of New London, . .	H. O. Bowers,	100 00
May 1,	Services and expenses, . .	G. E. Hinman,	72 75
May 29,	Services and expenses, Bridgeport	J. G. Mitchell,	13 60
June 30,	Services and expenses in Ice cases,	B. Holden,	50 00
July 9,	Services and expenses in New York Insurance Company cases vs. Insurance Commissioner,	W. F. Henney,	300 00
1907.			
Jan.	Services and expenses in State vs. Knapp *et al.*, ...	Kenealy & Keating,	98 20
Jan.	Services and expenses in foreclosure cases, ...	W. U. Pearne,	55 00
			$1,757 05

Personal and incidental expenses during the year 1905, as per vouchers on file with the Comptroller, ...	$197 07
Personal and incidental expenses during the year 1906–1907, as per vouchers on file with the Comptroller, ...	124 90
	$321 97